

1 Ali M.M. Mojdehi, State Bar No. 123846
Janet D. Gertz, State Bar No. 231172
2 **BAKER & McKENZIE LLP**
12544 High Bluff Drive, Third Floor
3 San Diego, CA 92130-3051
Telephone: +1 858-523-6200

4 Attorneys for Plaintiff/Appellee
5 KISMET ACQUISITION, LLC
6
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re
12 JERRY LEE ICENHOWER dba Seaview
Properties, and DONNA LEE ICENHOWER,
13 Debtors.

14
15 ALEJANDRO DIAZ-BARBA AND MARTHA
MARGARITA BARBA DE LA TORRE,

16 Defendants/Appellants,

17 v.

18 KISMET ACQUISITION, LLC,

19 Plaintiff/Appellee.
20
21
22

Case No.: 3:08-CV-01446-BTM-BLM

Bankruptcy Case No. 03-11155-LA-7

Chapter Number 7

Adv. Proc. No: 04-90392

Adv. Proc. No.: 06-90369

**REQUEST FOR JUDICIAL NOTICE
BY PLAINTIFF, KISMET
ACQUISITION, LLC, IN SUPPORT
OF ITS OPPOSITION TO DIAZ
DEFENDANTS' MOTION FOR STAY
PENDING APPEAL**

DATE: August 28, 2008

TIME 4:00 p.m.

DEPT: 15

JUDGE: Hon. Barry Ted Moskowitz

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Pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure and Rule 201 of the Federal Rules of Evidence, Plaintiff/Appellee Kismet Acquisition, LLC requests this Court to take judicial notice of the following documents in support of their Opposition to the Diaz Defendants' Motion for Stay Pending Appeal:

EXHIBIT NO.	DOCUMENT NAME	DATE
1	Memorandum of Decision and Order re: Damages; and Directing Entry of Judgment, Lonie v. Icenhower, United States District Court, Southern District of California, Civ. No. 00-CV-612-L(LSP)	Filed November 23, 2003
2	Plaintiff's Trial Demonstrative, "More Red Flags for Diaz"	Read into Record at Trial April 25, 2008
3	Villa Vista Hermosa, Puerto Vallarta Hotel/Villa, available at http://villavistahermosa.com/tourint.htm (last visited August 22, 2008)	Printed from web site August 22, 2008
4	Order on Diaz Defendants' Motion to Dismiss, Adversary Proceeding No. 04-90392	Entered February 13, 2007
5	Diaz Defendants' Supplemental Trial Brief, Adversary Proceedings Nos. 04-90392; 06-90369	Filed April 25, 2008
6	Pre-Trial Order, Adversary No. 06-90369	Entered April 21, 2008
7	Pre-Trial Order, Adversary No. 04-90392	Entered April 18, 2008

Respectfully submitted,

Dated: August 22, 2008

BAKER & MCKENZIE LLP

By: /s/ Ali M.M. Mojdehi

Ali M.M. Mojdehi
Janet D. Gertz

Attorneys for Plaintiff/Appellee
Kismet Acquisition, LLC, a Delaware
limited liability company

EXHIBIT 1

FILED

03 NOV 24 AM 10:13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN P. LONIE, DIANE C. ONEY
AND THOMAS E. LONIE, JR. FAMILY
TRUST,

Plaintiff,

v.

JERRY LEE ICENHOWER, et al,

Defendants.

Civil No. 00-CV-612-L(LSP)

MEMORANDUM OF DECISION and
ORDER RE: DAMAGES; and
DIRECTING ENTRY OF
JUDGMENT

By Memorandum of Decision and Order filed September 25, 2003, the Court found in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim. The issue of damages remained pending; therefore, plaintiffs were ordered to provide the Court and opposing counsel with their verified calculation of any and all damages sustained in conformity with the Court's Memorandum of Decision and Order. Defendants were given an opportunity to file a response, consistent with the Memorandum of Decision and Order, to plaintiffs' calculation of damages. Plaintiffs filed a reply memorandum. The matter of damages having been fully briefed and finding this matter suitable for determination on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1), the Court enters the following Order.

00cv612

EXHIBIT "D"

Discussion

1. Money Damages

Plaintiffs submitted their verified statement of damages on October 14, 2003 to which defendants filed a statement of non-opposition to plaintiffs' damages calculations.¹

In its Memorandum of Decision and Order, the Court found the English Note to be the operative Note. The Note required defendants to pay plaintiffs the principal sum of \$550,000.00 plus advances of \$192,199.23. Both principal and advances were to bear interest at a rate of 10% per annum. The effective date of the Note was April 1, 1995. Calculated through October 31, 2003, the damages due and owing to plaintiffs are as follows:

Principal	\$ 550,000.00
Interest on Principal	472,083.33
Advances	192,199.23
Interest on Advances	<u>142,547.76</u>
Total Due	\$1,356,830.32

2. Prevailing Party

The Court finds and concludes that plaintiffs are the prevailing parties in this action. Plaintiffs may seek an award of costs under Local Civil Rule 54.1.

3. Re-registration of Lien

As noted above, defendants do not challenge the mathematical calculation of damages presented by plaintiffs. But defendants assert that plaintiffs are not entitled to "other relief" in the form of reconveyance of the title to the Villa property to plaintiffs and/or the re-registration of the prior lien on the Villa. Plaintiffs contend that re-registration of the lien is appropriate relief and such relief was generally requested in their Complaint. The Court concurs.

The English Note contained terms requiring a first priority lien to be registered in Mexico. At trial, Icenhower testified that the lien had been registered but was released

¹ Defendants reserve their contentions as to "whether or not such interest was due under the terms of the agreements in issue, and [] all of their claims and contentions with respect to the merits of the action pending a determination of whether or not an appeal will be filed." Defendants' Opposition at 2.

1 pursuant to the April 1, 1996 Agreement with Lonie. Lonie agreed to release the lien on the
 2 Villa Property for the purpose of effectuating a proposed sale of property to the World
 3 Interactive Network ("WIN"). The February 9, 1996 proposal from Icenhower to Lonie also
 4 indicated that the lien would be reinstated if the sale fell through. The sale was not
 5 consummated. Based on the evidence presented at trial, the Court found that Lonie did not
 6 cancel the requirement to re-register the Note obligation based on an alleged oral agreement
 7 with Icenhower. The Court specifically found that the failure to re-register the lien constituted
 8 a breach of the Agreement on Note contract requiring the lien to be re-registered if the sale was
 9 not completed. The Court further found that between Lonie and Icenhower, the lien was
 10 effective and constituted a security interest in Icenhower's rights, title or interest in the Villa
 11 and Icenhower breached the agreement to re-register the lien when the WIN transaction failed
 12 to go forward. The Court now finds that plaintiffs sought all legally available relief in their
 13 Complaint, including the re-registration of the lien. Requiring defendants to re-register the lien
 14 will function to secure the damages owed to plaintiffs and is an available and appropriate
 15 remedy for plaintiffs.

16 The lien on the Villa property was intended to secure the amount due and owing to
 17 plaintiffs. Because the Court has found and concluded that defendants were required under the
 18 agreement to re-register the lien in the event the property was not sold, defendants will be
 19 required to re-register the first priority lien in Mexico in accordance with the Agreement
 20 on Note and the Court's Memorandum of Decision and Order until full payment of the
 21 damages the Court has awarded plaintiffs is paid in full. Upon defendants' full payment of
 22 damages to plaintiffs, the lien shall be released.

23 Conclusion

24 Based on the foregoing, **IT IS ORDERED** awarding plaintiffs damages in the amount
 25 of \$550,000.00 in principal; 10% per annum interest on the principal from April 1, 1995;

26 ...

27 ...

28 ...

1 \$192,199.23 in advances; 10% per annum interest on the advances from April 1, 1995.²

2 IT IS FURTHER ORDERED that defendants shall re-register the lien on the Villa
3 property within ten (10) days of the filing of this Order. Defendants shall submit evidence of
4 the re-registration of the lien to plaintiffs within ten (10) days of the registration of the lien.
5 Upon full payment of the damages in this matter, plaintiffs shall cause the lien to be released.

6 IT IS FURTHER ORDERED that full payment of the damages awarded shall be
7 made within 60 days of the filing of this Order.

8 IT IS FURTHER ORDERED that in the event defendants fail to pay to plaintiffs the
9 full damages award within the time provided, defendants shall reconvey the Villa property,
10 free of any encumbrance, claim, lien or liability that has been placed upon the property or
11 occasioned by defendants' actions or inactions, to plaintiffs in accordance with the terms of the
12 parties' underlying agreement.

13 IT IS FURTHER ORDERED directing entry of judgment in plaintiffs' favor and
14 against defendants; and in counterdefendants' favor and against counterclaimants on the
15 counterclaim, and awarding damages to plaintiffs in accordance with this Order.

16 IT IS SO ORDERED.

17
18 Dated: 11/21/03


19 M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

20
21 COPY TO:

22 HON. LOUISA S. PORTER
UNITED STATES MAGISTRATE JUDGE

23 ALL COUNSEL
24
25
26

27 ² Plaintiffs have calculated the accrued interest through October 31, 2003 in the following
28 amounts: \$472,083.33 - interest on principal and \$142,547.76 - interest on advances. Plaintiffs are
entitled to accrued interest until payment is made in full for principal and advances.

000v612

ALL-STATE LEGAL 900-227-0810 FRII RECYCLED



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

Case Number: 3:00-cv-00612

Lonie - PLAINTIFF

v.

Icenhower -

DEFENDANT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

NOV 25 2003

JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Clerks Judgment: It is ordered and adjudged that plaintiffs are awarded damages in the amount of \$550,000.00 in principal; 10 percent per annum interest on the principal from 4/1/95; \$192,199.23 in advances; 10 percent per annum interest on the advances from 4/1/95. It is further ordered directing entry of judgment in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim, and awarding damages to plaintiffs in accordance with the 11/24/03 Order.....

11/25/03

Date

W. Samuel Hamrick, Jr.

Clerk

by R. Chambers, Deputy Clerk

Entered on 11/25/03

pre - Lorenz
ref - Porter

103
EXHIBIT "E"

EXHIBIT 2

Red Flags for Diaz/Barba



Diaz is first introduced to Jerry Icenhower by Eugene Kocherga in early 2003 to discuss purchase of Villa. Diaz understands at the time that Jerry Icenhower is the owner of the Villa.



Diaz meets Jerry again at the Villa in August '03, the time of Eugene Kocherga's wedding. Diaz talks to the Villa housekeeper, Elba, who tells Diaz that Jerry Icenhower has difficulty paying the bills and always needs money.





Diaz's due diligence reveals that Icenhower is not the owner but is the prior owner of the beneficial trust interest before Howell & Gardner, the current owner. Notwithstanding, Diaz sees Icenhower still in control of the property, receiving the income from the rentals, paying the staff, and is the contact listed on the web site advertising the property: villavistahermosa.com.





Diaz's due diligence reveals that Icenhower had obtained his beneficial trust interest in the Villa from D. Donald Lonie.

More Red Flags for Diaz/Barba

 Jerry Icenhower tells Diaz during due diligence that he is in litigation with the Lonie family.

 Pending Action No. Lonie et al v. Icenhower, US Dist. Court, SD Cal., 00-CV-612, *Lonie v. Icenhower*, is a public record.

 Despite recently having sold a property valued at \$1.5 million in 2002, in October 2003, Icenhower comes to Diaz for a loan.

 Diaz agrees to “loan” Icenhower \$100,000, with the understanding that the amount will be treated as a down payment towards Diaz’s purchase of the Villa Vista Hermosa beneficial trust interest.

 Icenhower files bankruptcy in December 2003.

More Red Flags for Diaz/Barba



On December 16, 2003 Diaz receives the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines, including the Debtors' first Meeting of Creditors pursuant to 11 U.S.C. § 341. The certificate of service Diaz also received shows that Stephen Lonie and Thos. Lonie Jr. also received notice.





Notice of Bankruptcy Case Filing says: "If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our Internet home page <http://www.casb.uscourts.gov> or at the Clerk's Office, Jacob Weinberger U.S. Courthouse, 325 West F Street, San Diego, CA 92101-6991."





Diaz is worried about Icenhower's bankruptcy and has a conversation with Icenhower about it. Icenhower tells Diaz that he was forced to declare bankruptcy because of litigation with the Lonie Trust over the Villa

More Red Flags for Diaz/Barba


 Icenhower tells Diaz about the litigation with the Lonie Trust in the Bankruptcy Court. Diaz tells Icenhower that his attorney has told him that transaction cannot be avoided under Mexican law


 Icenhower's Petition lists as creditors Stephen Lonie and Thomas Lonie, Jr., and reflects that the obligation was incurred in 1993 "Statement of decision issued; judgment to be entered \$1,356,830.00 and lists Lonie et al v. Icenhower, US Dist. Court, SD Cal., 00-CV-612, 11/24/03 "memo decision for plaintiff."


 No shareholder authorization was obtained and, and beyond Jerry Icenhower's explanation that they are a group of Nevada investors, no investigation is made into who the shareholders of Howell and Gardner really are.


 Diaz obtains a copy of the Articles of Incorporation of Howell & Gardner during due diligence which state that prior shareholder authorization is required for a sale of the assets of the company. Diaz's counsel has the Articles of Incorporation translated into Spanish.

More Red Flags for Diaz


 Diaz purchases the Villa with all furnishings, electronics, and motor vehicles. The truck on the property is registered in Jerry Icenhower's name.


 The terms of the purchase and sale contract are not negotiated with anyone at Howell & Gardner, and the purchase agreement is not reviewed by anyone at Howell and Gardner, but is merely brought to the closing.


 There are no written communications whatsoever between Diaz or his lawyer and anyone at Howell & Gardner or any lawyer for Howell & Gardner.

 Although Craig Kelley signs the Letter of Instruction to the Mexican Bank, Diaz does not bother to contact Craig Kelley, the purported authorized representative of Howell & Gardner, to introduce himself or discuss the terms of the transaction prior to the close.


More Red Flags for Diaz

 Although Diaz's due diligence has revealed that Peter R.J. Thompson acted as the "local Mexican counsel" in the prior transfer by Jerry Icenhower to Howell & Gardner, Diaz does not inquire of him about the details of the prior transaction between Icenhower and Howell & Gardner.


 Diaz first meets Craig Kelley on June 7, 2004 in San Diego at the time the purchase and sale contract is signed. Jerry Icenhower is in attendance. Diaz merely exchanges "pleasantries" but otherwise ignores Craig Kelley.


 A few days prior to the contract signing, Jerry Icenhower hands Diaz a piece of paper with handwriting showing the accounts and entities to whom the purchase consideration is to be paid. That information is inserted into the purchase agreement by Sanchez.

More Red Flags for Diaz

 Jerry Icenhower directs Diaz to pay the balance of the consideration to Icenhower Investments (\$191,567); Buckeye International Funding, Inc. (\$675,000); and Western Financial Assets (\$398,000). Howell & Gardner is to receive just \$25,000. Diaz does not ask why or ask Craig Kelley for verification.

 The amounts sent to Buckeye International Funding, Inc., Western Financial Assets, and Icenhower Investments are wired to bank accounts in Visalia, California, not Nevada, where Howell & Gardner and its owners are supposed to be located.

 Public information on the Nevada Secretary of State web site shows that both Western Financial Assets and Buckeye International Funding have only recently been created and that the resident agent is a nominee officer and director, raising questions as to who is really in control. Public record searches would show "Icenhower Investments" does not exist as a real entity.

 Icenhower warns Diaz prior to the closing that the bankruptcy trustee may file a suit against Howell & Gardner and challenge the transaction. Diaz still proceeds.

More Red Flags for Diaz



Diaz's due diligence reveals that, although it was a taxable transaction, no taxes were paid by Jerry Icenhower on the transaction for the sale of the Villa to Howell & Gardner and that the stated value of the transaction is the same as the appraised value. Diaz still doesn't ask Howell & Gardner for a copy of the underlying purchase contract to validate the actual terms of that transaction.



H&G's (and thus Diaz/Barba's) Mexican tax "problem" is handled by falsifying the purchase price on the contracts and in the deed.



Diaz agrees in the purchase agreement to pay half of the seller's capital gains and transfer taxes. Despite the contract, Diaz pays all the seller's capital gains and transfer taxes, because Howell & Gardner has no money.



Icenhower suggests to Diaz that the transaction be in cash so it cannot be traced.



Diaz agrees to pay a portion of seller's trustee fees. Before closing, he discovers Howell & Gardner is seriously delinquent, ends up paying all.

Despite All These Warnings to Diaz/Barba:

- ▶ There is *no* inquiry into the nature of H&G's business
- ▶ There is *no* inquiry into the identity of H&G's shareholders
- ▶ There is *no* inquiry into H&G's reputation
- ▶ There is *no* inquiry made into H&G's capitalization
- ▶ There is *no* inquiry made into H&G's solvency
- ▶ There is *no* request made for H&G's audited financials
- ▶ There is *no* inquiry into what other assets H&G might own
- ▶ There is *no* request to review the terms of the sale between H&G and Incenhowers (purchase contract)
- ▶ There is *no* attempt to review the pending bankruptcy case proceedings regarding the Incenhowers
- ▶ Diaz/Barba's "due diligence" is limited to a perfunctory title search in Mexico

EXHIBIT 6

EXHIBIT 6

COPY

CSD 3021 (08/21/00)

Name, Address, Telephone No. & I.D. No.

Ali M.M. Mojdehi, State Bar No. 123846

Janet D. Gertz, State Bar No. 231172

Baker & McKenzie LLP

12544 High Bluff Drive, Third Floor

San Diego, California 92130-3051

Telephone: (858) 523-6200

Attorneys for Plaintiff, Kismet Acquisition, LLC

Order Entered on
 April 21, 2008
 by Clerk U.S. Bankruptcy Court
 Southern District of California

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

JERRY L. ICENHOWER dba SEAVIEW PROPERTIES, and DONNA
 L. ICENHOWER

BANKRUPTCY NO. 03-11155-LA-7

Debtor.

KISMET ACQUISITION, LLC, a Delaware limited liability
 company,

ADVERSARY NO. 06-90369

Plaintiff(s)

v.

JERRY L. ICENHOWER, an individual, et al.

Defendants(s)

Date of Trial: April 21 - 24, 2008

Time of Trial: 10:00 a.m.

Name of Judge: Hon. Louise DeCarl
 Adler

PRE-TRIAL ORDER

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 63 with exhibits, if any, for a total of 63 pages, is granted.

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DATED: April 18, 2008

Jud

Louise DeCarl Adler
 Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. of Bankruptcy Court granted by the court.

Submitted by:

Baker & McKenzie, LLP

(Firm name)

By: /s/ Ali M.M. Mojdehi

Attorney for Movant

Kismet Acquisition, LLC

CSD 3021

SDODMS1/688332.1

1 Ali M.M. Mojdehi, State Bar No. 123846
2 Janet D. Gertz, State Bar No. 231172
3 **BAKER & McKENZIE LLP**
4 12544 High Bluff Drive, Third Floor
5 San Diego, CA 92130-3051
6 Telephone: +1 858-523-6200

7
8 Attorneys for Plaintiff
9 KISMET ACQUISITION, LLC
10

11 UNITED STATES BANKRUPTCY COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 In re

15 JERRY LEE ICENHOWER dba Seaview
16 Properties, and DONNA LEE ICENHOWER,

17 Debtors.

18 KISMET ACQUISITION, LLC,

19 Plaintiff,

20 v.

21 JERRY L. ICENHOWER an individual; et al.

22 Defendants.
23

Case No. 03-11155-LA-7

Chapter Number 7

Adv. Proc. No: 06-90369

JOINT PRE-TRIAL ORDER

DATE: April 21-24, 2008

TIME 10:00 a.m.

DEPT: 2

JUDGE: Hon. Louise DeCarl Adler

NATURE OF ACTION

24 This is an action for:

25 (i) Alter Ego and Reverse Veil Piercing (Nevada common and statutory law);

26 (ii) Avoidance, Preservation, and Recovery of Post-Petition Conveyances (11 U.S.C. §§ 549,
27 550, 551); and

28 (iii) Declaratory Relief

///

The Parties

1. The plaintiff is Kismet Acquisition, LLC ("KISMET"). KISMET is a limited liability corporation organized under the laws of Delaware with its principal place of business in San Diego, California.

2. Defendant Jerry L. Icenhower ("MR. ICENHOWER") is an individual with his principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case.

3. Defendant Donna L. Icenhower ("MRS. ICENHOWER") is an individual with her principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case.

4. Defaulted Defendant Howell & Gardner Investors, Inc. ("HOWELL & GARDNER") is a corporation organized under the laws of the state of Nevada.

5. Defendant Martha Margarita Barba de la Torre ("MS. BARBA") is an individual and Mexican citizen with a residence at the following address: 1781 Mother Grundy Truck Trail, Jamul, California, 91935.

6. Defendant Alejandro Diaz-Barba ("MR. DIAZ") is an individual and Mexican citizen with a residence at the following address: 222 Dovary Road, Chula Vista, California, 91910.

7. Defaulted Defendant Western Financial Assets, Inc. ("WESTERN"), a Nevada corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

8. Defaulted Defendant Buckeye International Funding, Inc. ("BUCKEYE"), a Nevada corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

9. Defaulted Defendant Newark Enterprises, LLC ("NEWARK"), a Nevada limited liability company, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

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10. Defaulted Defendant Columbus Enterprises, LLC ("COLUMBUS"), a Nevada limited liability company, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

11. Defaulted Defendant Croton Enterprises, LLC ("CROTON"), a Nevada limited liability company, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291;

12. Defaulted Defendant Lynnwood Enterprises, LLC ("LYNNWOOD"), a Nevada limited liability company, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291;

13. Defaulted Defendant Utica Enterprises, LLC ("UTICA"), a Nevada limited liability company, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

JURISDICTION AND VENUE

1. KISMET asserts that the United States District Court for the Southern District of California has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. This Court has referred jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(A), (E), (J), and (O) and 11 U.S.C. § 544, and under General Order 312-D of the United States District Court for the Southern District of California.

2. Defendants MR. DIAZ AND MS. BARBA (collectively, "DIAZ DEFENDANTS") reserve all rights to contest that this Court has jurisdiction over any action affecting title to real property in Mexico.

3. KISMET asserts that venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1409(a) because the underlying bankruptcy case is pending in this district.

4. KISMET informs the Court that, Defendants have advised us that they contend that venue in the Southern District of California is improper.

5. KISMET asserts that this adversary proceeding for recovery of an avoided transfer is a core proceeding within the meaning of 28 U.S.C. §§157(b)(1) and (2)(B), (E), (F), (H) and (O).

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6. Defendants have advised KISMET of no particular position on whether this adversary proceeding is "core," but otherwise appear to intend to contest this issue.

ADMITTED FACTS

The following facts are admitted and require no proof:

1. That KISMET is a limited liability corporation organized under the laws of Delaware with its principal place of business in San Diego, California.

2. That MR. ICENHOWER is an individual with his principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case. [Debtors' Answer to Complaint; ¶2 Bankruptcy Petition].

3. That MRS. ICENHOWER is an individual with her principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case. [Debtors' Answer to Complaint, ¶3; Bankruptcy Petition].

4. That MS. BARBA is an individual with a place of residence in San Diego County, California [Adv. Proc. 04-90392, Diaz Answer to First Amended Complaint dated April 16, 2007 ¶15 (hereinafter "Diaz Answer in 04-90392")], and who has testified that her "current residence" and the residence where she spends "most of her time" is the following address: 1781 Mother Grundy Truck Trail, Jamul, California, 91902. [Bankruptcy Docket; Deposition of Martha Barba dated Sept. 5, 2007, at 10-12].

5. That MR. DIAZ is an individual who has lived in San Diego County, California, since 1992 [Diaz Deposition Sept. 11, 2007 at 21] who has testified that his "current place of residence" and where he "live[s]" is at the following address 222 Dovary Road, Chula Vista, California, 91910. Prior to 2003, his primary place of residence was at the following address: 4651 Villas Drive and/or Place, Bonita, California, 91902. [Deposition of Alex Diaz dated Sept. 11, 2007 at 28, 98-100].

6. That MR. DIAZ is an experienced businessman who has, for the past 15 years, made a number of real estate investments, and is on the board of directors of one or more companies.

///

7. That KISMET is assignee and successor in interest to the claims against the Debtors of Stephen E. Lonie, Diane C. Oney and Thomas E. Lonie, as trustees ("Trustees") of the D. Donald Lonie, Jr., Family Trust ("Lonie Trust"), original creditors of the Debtors in the underlying Chapter 7 case. [Notice Of Transfer Of Claim Other Than For Security, Main Case Docket Entry No. 69; Diaz Answer in 04-90392, ¶34.]

8. That MS. BARBA owns XLNC1, a California Corporation, with a primary place of business at 1690 Frontage Road, Chula Vista, CA 91911. That MS. BARBA is an officer and director of other companies having a principal place of business in San Diego County, California, including International Institute of Photographic Arts, Inc., a California Corporation with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911; Califormula, Inc., a California corporation, with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911, and XLNC1. That MS. BARBA is the agent for service of process for these same companies at 1690 Frontage Road, Chula Vista, CA 91911. [Deposition of Martha Diaz, Sept. 5, 2007 10; California Secretary of State web site.] That MS. BARBA is a member of Pacific Wings, LLC, a California limited liability company with a principal place of business at 4025 Kearny Villa Rd San Diego, CA 92123. [*Id.*]

9. That MR. DIAZ is an officer and director of Califormula, Inc., a California corporation, with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911, Radio Computing Latinoamerica Inc., a California Corporation (suspended) with a principal place of business at 1231 Third Ave., Ste. F, Chula Vista, CA 91911 and XLNC1, a California Corporation, with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911. That MR. DIAZ is a member of Pacific Wings, LLC, a California limited liability company with a principal place of business at 4025 Kearny Villa Rd San Diego, CA 92123. That MR. DIAZ is a member of Rain Forest Ventures, LLC a California limited liability company with a principal place of business at 4651 Villas Place, Bonita, CA 91902. [*Id.*] That MR. DIAZ is an officer of and agent for service of process for Expo Radio, Inc., a California Corporation (suspended), with a primary place of business at 1690 Frontage Road, Chula Vista, CA 91911. [*Id.*]

///

10. That Defendant MR. DIAZ owns multiple parcels property in San Diego. [Adv. Proc. 04-90392, Answer to First Amended Complaint dated March 23, 2005, ¶ 8]

11. That Defendant HOWELL & GARDNER is a corporation organized under the laws of the state of Nevada. [Entry of Default, Docket Entry No. 18.]

12. That Defendant HOWELL & GARDNER'S corporate status has been revoked by the State of Nevada, and it has no agent appointed for service of process. [Entry of Default, Docket Entry No. 18.]

13. That a default was entered against Defendant HOWELL & GARDNER in this action on February 23, 2007. [Entry of Default, Docket Entry No. 18.]

14. That a default was entered against Defendant BUCKEYE in this action on September 17, 2007. [Entry of Default, Docket Entry No. 77.]

15. That a default was entered against Defendant COLUMBUS in this action on September 17, 2007. [Entry of Default, Docket Entry No. 79.]

16. That a default was entered against Defendant CROTON in this action on September 17, 2007. [Entry of Default, Docket Entry No. 78.]

17. That a default was entered against Defendant LYNNWOOD in this action on September 17, 2007. [Entry of Default, Docket Entry No. 79.]

18. That a default was entered against Defendant NEWARK in this action on September 17, 2007. [Entry of Default, Docket Entry No. 79.]

19. That a default was entered against Defendant UTICA in this action on September 17, 2007. [Entry of Default, Docket Entry No. 79.]

20. That a default was entered against Defendant WESTERN in this action on September 17, 2007. [Entry of Default, Docket Entry No. 79.]

21. That, as to Defendant HOWELL & GARDNER, HOWELL & GARDNER is the Debtors' alter ego. [Entry of Default, Docket Entry No. 18.]

22. That, as to Defendant HOWELL & GARDNER, HOWELL & GARDNER had a unity of interest and ownership with the Debtors, such that any individuality and separateness have ceased. [Entry of Default, Docket Entry No. 18.]

23. That, as to Defendant HOWELL & GARDNER, HOWELL & GARDNER was an instrument and/or "straw man" for transactions involving the Villa Property, including without limitation, the transfer of the Villa property to the DIAZ DEFENDANTS. [Entry of Default, Docket Entry No. 18.]

24. That, as to Defendant HOWELL & GARDNER, adherence to the fiction of the separate existence of HOWELL & GARDNER as an entity distinct from the Debtors would permit an abuse of the corporate privilege and would sanction fraud and promote injustice. [Entry of Default, Docket Entry No. 18.]

25. That, as to Defendant HOWELL & GARDNER, it has grossly inadequate capital and was so inadequately capitalized that, compared with the business to be done and the risks of loss, its capitalization was illusory. [Entry of Default, Docket Entry No. 18.]

26. That, as to Defendant HOWELL & GARDNER, formal legal requirements of HOWELL & GARDNER as a separate and independent corporation are not observed. [Entry of Default, Docket Entry No. 18.]

27. That, as to Defendant HOWELL & GARDNER, any purported shareholders of HOWELL & GARDNER, and their purported equity interests in HOWELL & GARDNER are illusory and a sham created by HOWELL & GARDNER and the Debtors to obscure the effective ownership and control of HOWELL & GARDNER by the Debtors and/or the complete unity of interest between the Debtors and HOWELL & GARDNER. [Entry of Default, Docket Entry No. 18.]

28. That, as to Defendant HOWELL & GARDNER, KISMET, as successor in interest to the Trustee, is entitled to avoid the post-petition purported transfers by the Debtors, MR. ICENHOWER AND MRS. ICENHOWER, and the their alter ego, Defendant HOWELL & GARDNER of the Villa Real Property Trust to the DIAZ DEFENDANTS. [Entry of Default, Docket Entry No. 18.]

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29. That the transfer by of the beneficial interest in the Villa Property by Defendant HOWELL & GARDNER to DIAZ DEFENDANTS occurred subsequent to the Debtors' petition date. [Diaz Defendants' Answer in this Adversary Proceeding ¶10.]¹

30. That under that certain Purchase and Assignment Agreement dated as of October 19, 2006, KISMET received an assignment of all right, title and interest in or to all assets of the Debtors' bankruptcy estate, including without limitation, all rights, and/or causes of action in the bankruptcy case, whether against third parties and/or against the Debtors, whether asserted or yet to be asserted, and whether arising in bankruptcy or nonbankruptcy law, including without limitation, the above listed case, along with all other rights, privileges, and benefits of the Trustee and the Debtors' bankruptcy estate arising out of, related thereto, or in connection therewith ("Assignment"). [Order Granting Sale of Assets Outside of Ordinary Course of Business [Main Case Docket Entry No. 95.]

31. That on December 7, 2006, this Court entered an Order Granting Sale of Assets Outside of Ordinary Course of Business approving the Assignment. [Order Granting Sale of Assets Outside of Ordinary Course of Business [Main Case Docket Entry No. 95.]

32. Pursuant to this Court's Order entered December 19, 2006, Kismet was substituted in as the named Plaintiff in this action, replacing Gerald H. Davis, Chapter 7 Trustee ("Trustee"). [Docket Entry No. 9.]

33. That MR. DIAZ is a scheduled unsecured creditor of this bankruptcy estate based on a loan of \$100,000 made to MR. ICENHOWER on or about October 7, 2003 [See Adv. Proc. No. 04-90392, Diaz Defendants' Answer to First Amended Complaint dated March 23, 2005, ¶38; Diaz Answer in 04-90392 ¶ 5; Adv. Proc. No. 04-90392, Declaration of Alex Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction dated June 8, 2007 ¶¶9, 10, 12, 13; Debtors' Schedules].

34. That a claims bar date of December 6, 2004 was set in the Debtors' Chapter 7 case and MR. DIAZ did not file a claim [See Court Docket; Claims Register; Diaz Answer in 04-90392 ¶5].

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¹ The Diaz Defendants did not file an Answer in this Adversary Proceeding, but did serve an Answer on Kismet. For the Court's convenience, the Diaz Defendants' Answer is attached hereto as Exhibit "D".

35. That not until early in 2004, after the underlying Chapter 7 case was filed, did the Debtors disclose to the Chapter 11 Trustee that on or about March 4, 2002 the Debtors purported to sell, transfer, assign or otherwise convey their interest in the Villa Real Property Trust to HOWELL & GARDNER. [See Answer of Debtors, ¶ 22; *see also* Transcript of Debtors' Section 341(a) Meeting of Creditors (judicially noticeable fact of which KISMET hereby requests that this Court take judicial notice under Fed. R. Evid. 201(d).]

36. That of the consideration paid by the DIAZ DEFENDANTS for the transfer of the Villa Property, other than for \$25,000, the checks and/or wire payments were sent by the DIAZ DEFENDANTS to other entities than defendant HOWELL & GARDNER. [See Adv. Proc. 04-90392, Declaration of Alex Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction dated June 8, 2007 ¶12.)] The remainder was directed as follows: (i) \$675,000 to Buckeye International Funding, Inc.; (ii) \$398,663 to Western Financial Assets, Inc.; and (iii) \$191,567 to Icenhower Investments, to accounts at Visalia Community Bank, 5412 Avenida de Los Robles, Visalia, CA 93291.

37. That, in addition to the purported agreement for the transfer of the Villa Property to HOWELL & GARDNER, the Debtors retained a right to receive the proceeds of any sale of the Villa Property which is above \$1.5 million, (later amended to \$1.4 million, and a right to buy the Villa Property back from HOWELL & GARDNER. The transfer agreement also purported to give the Debtor MR. ICENHOWER, management and control of the Villa Property, the right to all profits and responsibility for all costs, notwithstanding the purported transfer to HOWELL & GARDNER. [Debtors' Answer ¶23.]

38. During proceedings and settlement negotiations conducted in the District Court Litigation in October 2002, the Debtors represented that they were in control of the Villa Property, despite the purported transfer to HOWELL & GARDNER, and actively negotiated a sale of their interests to the Lonie Trust. Specifically, the settlement brief filed by the Debtors, stated "The Villa has been continuously marketed for the sum of \$2,500,000 by MR. ICENHOWER, and has been appraised at that value several years ago There has been interest around the \$1,500,000 level, but MR. ICENHOWER has been unwilling to part with it a[t] this price. Rental opportunities for the

1 Villa have improved since the "9/11" tragedy and the Villa is currently operating at a "break even."
 2 In short, the ICENHOWERS are able to hold the property while they seek the right buyer" The
 3 brief then goes on to offer a settlement option that includes a "transfer of the beneficial interest in the
 4 [Real Property Trust] for the Villa. . . ." [Debtors' Answer ¶ 28.]

5 39. That Defendant MS. BARBA's formal name is Martha B. Diaz and that she is also
 6 sometimes known as Margarita Barba de La Torre, Martha Barba Diaz, Martha M. Diaz, Martha
 7 Margarita Diaz, and Martha B. Diaz. [Answer to First Amended Complaint ¶7].

8 40. That Defendant MR. DIAZ's formal name is Porfirio Alejandro Diaz Barba and that
 9 this is frequently shortened for the sake of simplicity to Alejandro Diaz-Barba, Alex Diaz, Porfirio
 10 Alejandro Diaz, Alejandro B. Diaz, Porfirio A. Diaz, and Porfirio Diaz. [Adv. Proc. No. 04-90392,
 11 Diaz Defendants' Answer to First Amended Complaint dated March 23, 2005 ¶8.]

12 41. That Defendant MR. DIAZ and defendant MS. BARBA each admit that an actual
 13 controversy has arisen and now exists between Plaintiff, on the one hand, and Defendant MR. DIAZ
 14 and defendant MS. BARBA, on the other hand. [Adv. Proc. No. 04-90392, Diaz Defendants'
 15 Answer to First Amended Complaint dated March 23, 2005 ¶65.]

16 42. That Defendant MR. DIAZ is an initial transferee of HOWELL & GARDNER.
 17 [Answer to Complaint in this Adversary Proceeding ¶7.]

18 43. That Defendant MS. BARBA is an initial transferee of HOWELL & GARDNER.
 19 [Answer to Complaint in this Adversary Proceeding ¶7.]

20 44. That on November 24, 2003 judgment of the District Court was entered against
 21 Defendants MR. ICENHOWER AND MRS. ICENHOWER in the action, *Stephen P. Lonie, Diane*
 22 *C. Oney and Thomas E. Lonie, Jr. Family Trust v. Jerry Lee Icenhower, et al.*, Civ. No. 00-CV-612,
 23 United States District Court, Southern District of California, which judgment provided that MR.
 24 ICENHOWER AND MRS. ICENHOWER either (a) pay damages in the amount of \$1,356,830.32
 25 within 60 days of the filing of the Court's Order on November 24, 2003 and (b) re-register the lien
 26 on the Villa Property within 10 days of the filing of the Court's Order on November 24, 2003 or (c)
 27 shall reconvey the Villa Property, free from any encumbrance, claim, lien, or liability that has been
 28 placed on the property or occasioned by MR. ICENHOWER AND MRS. ICENHOWER's actions or

inactions to the Lonie Trust in accordance with the terms of the underlying agreement between the parties. The judgment remains pending and the District Court Proceeding remains open. [Memorandum of Decision and Order Re: Damages; and Directing Entry of Judgment, Civ. No. 00-CV-612, United States District Court, Southern District of California (judicially noticeable fact, of which this Court is requested to take judicial notice under Fed. R. Evid 201(d), a true and correct copy of the Court's Memorandum of Decision and Order is attached hereto as Exhibit "A").]

RESERVATIONS AS TO FACTS

The reservations as to the facts recited in paragraphs 1-43 above are as follows:

1. As for admitted facts numbers 21-28, 35, 37, and 38, the DIAZ DEFENDANTS reserve the rights to claim that KISMET is not entitled to relief as to them.
2. As for admitted fact number 36, KISMET reserves the right to claim that the consideration stated was not actually paid as consideration for the transfer, but was for other purposes.
3. As for admitted fact number 37, plaintiff reserves the right to claim that other indicia of control by MR. ICENHOWER over the Villa Property were present.

JUDICIALLY NOTICEABLE FACTS

KISMET contends that the following facts, though not admitted, are judicially noticeable and accordingly requests the Court to take judicial notice of the same pursuant to Fed. R. of Evid. 201(d). The DIAZ DEFENDANTS do not join in KISMET'S request:

1. Pursuant to this Court's comments at the Hearing on KISMET'S Motion for Summary Judgment and Minute Order dated November 1, 2007,² Nevada law, as the state of incorporation of Defendant HOWELL & GARDNER, shall govern the determination of whether to pierce the corporate veil of HOWELL & GARDNER in this matter. This is the established law of the case.

² The Diaz Defendants have never lodged a proposed order, as they were requested by the Court to do. Kismet requests that the Court take judicial notice of its Minute Order.

2. Pursuant to the Court's Order dated November 9, 2007 [Adv. Proc. No. 04-90392, Docket Entry No. 329.]:

The chain of title in the public records coupled with Mr. Diaz's admissions of what he actually knew--e.g., Icenhower's continuing control and ostensible ownership of the Villa Property--gave Diaz the duty to enquire further as a reasonably prudent person with his level of business sophistication would do. Specifically, the chain of title showed that Icenhower owned the Villa Property two years earlier and continued to exercise control and, indeed, ostensible ownership. This would cause a reasonable person to investigate the agreement between Icenhower and Howell & Gardner Investors, Inc. and the prior sales price. Further, Diaz admits he knew of Icenhower's bankruptcy which would have triggered enquiry notice as to all future dealings with him. Icenhower--allegedly a stranger to Diaz (although there is evidence that Kocherga, Diaz's childhood friend, and Icenhower shared a business office in Coronado) borrowed \$100,000 U.S. from Diaz immediately before filing bankruptcy. Then, Diaz was aware that "Icenhower" Investments--was going to receive a large portion of the sales price of the Villa Property, rather than Howell & Gardner Investors, Inc., the putative owner. This combination of facts and circumstances should have triggered further enquiry.

3. Pursuant to the Court's Order dated March 6, 2008 [Docket Entry No. 159.]

1. Venue objection is procedurally improper. It should have been brought as a motion under FRCP 12(b) which should have been part of defendant's first response to the complaint. Because it was not brought as a "first response," it is a (a) untimely and (b) waived. *Richards v. Lloyd's of London*, 135 F. 3d 1289, 1292 (9th Cir. 1998); 12 Moore's Federal Prac. - Civil, Sec. 12.21.

2. Prior actions of the actual parties to the agreements establishes that the forum selection clause (in the fideicomiso trust document which was NOT attached as an exhibit) purporting to control the venue of litigation was ignored by those parties as permissive and limited in scope. Otherwise how could parties to the agreements (the Lonies and the defendants) have litigated a breach of contract disputed involving the property in the U.S. District Court without asserting jurisdiction in Mexico was exclusive?

3. The laches defense fails as a matter of law. This action was timely filed pursuant to Section 544(a). Further, contrary to movants' contention, this matter is a core proceeding, arising under Title 11. See 28 U.S.C. Sec. 157(b)(2)(F) [avoidance actions to recover fraudulent transfers are core matters]. Even though the Sec. 544(b) looks to state law, there is a strong policy that "core" actions be litigated in bankruptcy court.

4. Pursuant to this Court's Order dated December 11, 2007 [Adv. Proc. No. 04-90392, Docket Entry No. 348.]:

In defense of the avoidability of the fraudulent conveyance claim of

Plaintiff, Diaz asserts the affirmative defense of good faith and reliance on counsel. However, during his deposition, Diaz declined to answer questions about the advice he was given by counsel, claiming the attorney/client privilege. Court holds that it is well-settled that placing reliance on advice of counsel in issue waives the privilege. See *Chevron v. Pennzoil*, 974 F.2d 1156, 1162 (9th Cir. 1992); *US. v. Bilzerian*, 926 F.2d 1285, 1292-3 (2nd Cir. 1991). As noted by the court in *In re Gibco*, 185 F.RD.296 (D. Colo., 1997), a defense of good faith to a fraudulent conveyance actions contains both objective and subjective components. While the Court can determine whether objective circumstances would have placed Diaz on inquiry notice, to determine his subjective intent--"what he and his counsel knew about the circumstances surrounding the transfer and the purposes they sought to serve by making the transfer" (*Gibco* at p. 301) -- can only be established by Diaz' testimony about what his Counsel told him. Therefore, to the extent Diaz has raised the affirmative defense of "good faith," he has waived the attorney/client privilege as to evidence relevant to that defense.

5. Pursuant to this Court's Order dated February 13, 2007 [Adv. Proc. No. 04-90392, Docket Entry No. 216]:

TRANSFER AT ISSUE:

[Diaz] incorrectly focuses on transfers that occurred after debtor fraudulently conveyed his beneficial trust interest to H&G. However, this is a misapplication of Sec. 544(b). Sec. 544(b) enables a court to avoid a transfer of the interest of the debtor in property. Necessarily, we must focus on the transfer between the debtor and the initial transferee (H&G) and whether it was fraudulent to an actual creditor of debtor. Once that transfer was completed, debtor and estate no longer had an interest in the property which was avoidable. [Both the Maxwell and Midland cases cited by [Kismet] agree with the majority view that property fraudulently conveyed is not property of the debtor or Property of the Estate.

SUBJECT MATTER JURISDICTION:

For purposes of determining subject matter jurisdiction (SMJ) over the Sec. 544(b) and Sec. 550 claims, we look to the initial transfer to determine whether we have jurisdiction, not the later transfers. There is no jurisdictional challenge to the initial transfer. As correctly observed by Kismet, there is a statutory grant of SMJ over claims to avoid and recover a fraudulent conveyance of an interest in real property and, so long as the Court has personal jurisdiction over the defendants (as we do over the Diaz defendants), we have the ability to order the person to execute a conveyance or to enter a money judgment for its value, subject to enforcement through contempt powers, **EVEN THOUGH IT INDIRECTLY AFFECTS TITLE TO REAL PROPERTY OUTSIDE OUR TERRITORIAL BOUNDARIES.** See *Fall v. Easton*, 215 U.S. 1 (1909); see also *Opposition*, p. 5-6. Court rejects Movant's claim that we will be required to cancel the transfer of title between the Mexican Bank and the Diaz defendants. Rather, we can order the Diaz defendants to

1 create a fideicomiso trust and order them to convey the property to that
2 trust with the estate holding the beneficial interest.

3 AVOIDANCE ACTIONS:

4 The presumption against extraterritoriality is not implicated by this
5 complaint. Once we re-focus our attention to the correct transfer
6 (between debtor & H&G), the "center of gravity" is indisputably
7 within the U.S. Both [Diaz] and Kismet agree that we apply the
8 presumption against extraterritoriality only if the "center of gravity"
9 lies outside the U.S.

10 REMAINING ISSUES OF FACT

11 The following issues of fact, and no others, remain to be litigated upon the trial:

12 1. Whether Defendant JERRY ICENHOWER had equitable ownership of Defendant
13 HOWELL & GARDNER.

14 2. Whether an "injustice or inequitable result" will follow unless the corporate form of
15 HOWELL & GARDNER is disregarded, and whether all legitimate creditors are better off if the veil
16 is pierced and HOWELL & GARDNER'S separateness from the Debtors MR. ICENHOWER AND
17 MRS. ICENHOWER is disregarded.

18 3. Whether KISMET is barred by laches from the relief it seeks from the DIAZ
19 DEFENDANTS.

20 4. Whether KISMET is estopped from the relief it seeks from the DIAZ
21 DEFENDANTS.

22 EXHIBITS

23 The exhibits to be offered at the trial, together with a statement of all admissions by and all
24 issues between the parties with respect thereto, are as follows:

25 Plaintiff's Exhibits: See Exhibit "B".

26 Defendant's Exhibits: See Exhibit "C".

27 WITNESSES

28 Plaintiff's Witnesses

1. Fact Witnesses

- (a) Alex Diaz (ADDRESS ADMITTED ABOVE)
- (b) Martha Barba (ADDRESS ADMITTED ABOVE)
- (c) Jerry Icenhower (ADDRESS ADMITTED ABOVE)
- (d) Craig Kelley (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (e) Eugene Kocherga (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (f) Michael Kocherga (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (g) Wolfgang Hahn c/o Baker & McKenzie LLP, 12544 High Bluff Drive, Third Floor, San Diego, CA 92130
- (h) All witnesses identified and/or designated by Diaz Defendants not otherwise included herein.

2. Expert Witness

- (a) C. Hugh Friedman
Professor of Law
University of San Diego
5998 Alcalá Park
San Diego, CA 92110-2492
(619) 260-4600

3. Rebuttal Expert Witness

- (a) Lic. Eduardo A. Bustamante
BUSTAMANTE, ESCANDÓN Y PAREYÓN, S.C., Abogados, Blvd. Agua Caliente No. 10535, Suite 901, 22420, Tijuana, B.C. Mexico
01152) 664-6817408
01152) 664-6863983

Defendant's Witnesses

1. Fact Witnesses

- (a) Alejandro Diaz - Defendant
- (b) Martha Diaz-Barba - Defendant
- (c) Jerry Icenhower - Debtor/Defendant
- (d) Craig Kelley
- (e) Raul Sanchez
- (f) Wolfgang Hahn
- (g) Nicholas Kocherga

- (h) Eugene Kocherga
- (i) Michael Kocherga
- (j) Hobart Icenhower
- (k) Diane Oney
- (l) Eduardo Sanchez Acosta
- (m) Alberto Szekely
- (n) Guilleimo Alejandro Rivera Gonzalez
- (o) Lorenzo Landeros
- (p) Felipe I. Vazquez Aldana Sauza

2. Expert Witnesses

- (a) Jorge A. Vargas - Mexican Real Property law

3. Rebuttal Expert Witness

- (a) The court is advised that the Diaz Defendants have failed to provide Kismet with the identity of any witness they intend to call as an expert to rebut C. Hugh Friedman.

LIMINE REQUEST

KISMET requests that the Court limine out the following witnesses identified above by the DIAZ DEFENDANTS, but for whom no contact information or subjects of information has been provided (L. Bankr. R. 7016-9(g); Fed. R. Civ. Proc. 26(a)(1)(A)(i):

- (a) Raul Sanchez
- (b) Alberto Szekely
- (c) Guilleimo Alejandro Rivera Gonzalez
- (d) Lorenzo Landeros
- (e) Felipe I. Vazquez Aldana Sauza

REMAINING ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial:

1 1. Whether KISMET may recover the Villa Property from the DIAZ DEFENDANTS
2 under 11 U.S.C. § 550 and the Villa Property be preserved under 11 U.S.C. § 551.

3 2. Whether the corporate veil of HOWELL & GARDNER should be pierced.

4 3. Whether the Villa Property is property of the estate as defined in 11 U.S.C. § 541,
5 *nunc pro tunc* to the Debtors' petition date.

6 4. Whether KISMET is entitled to avoid the post-petition transfer by MR.
7 ICENHOWER AND MRS. ICENHOWER and their alter ego, HOWELL & GARDNER, of the
8 Villa Property to the DIAZ DEFENDANTS.

9 5. Whether a declaration and/or judgment should issue from the Court that:

10 (a) HOWELL & GARDNER is the alter ego of MR ICENHOWER AND MRS.
11 ICENHOWER and that the Villa Property is property of the estate.

12 (b) The purported transfer of the Real Property Trust and/or Villa Property to the
13 MR. DIAZ AND MRS. BARBA is a post-petition transfer, which KISMET is entitled to avoid and
14 recover.

15 **ADDITIONAL STIPULATIONS OF THE PARTIES**

16 1. This case shall be tried along with the related adversary proceeding, No. 04-90392.

17 2. All discovery obtained by either party in this Adversary Proceeding may be used in
18 the related Adv. Proc. No. 04-90392.

19 3. The Stipulation Regarding Disclosure of Confidential Information between and
20 among MR. DIAZ, MS. BARBA, and the Chapter 7 Trustee entered November 10, 2005 [Adv. Proc.
21 90392, Docket Entry No. 102] is adopted by KISMET, as amended to the effect that this Adversary
22 Proceeding shall also be deemed included with respect to all references made therein to Adversary
23 Proceeding No. 04-90392.

24 4. Any English translation of a Spanish original document shall be properly
25 authenticated as an exact and accurate translation of the Spanish original where it is duly certified as
26 such under a written Certification and seal by an Expert Translator in the English and Spanish
27 languages who is registered by a judicial district of Mexico. Notwithstanding the foregoing, the
28

1 parties otherwise reserve all rights to dispute the authenticity of the underlying Spanish original
2 document.

3 5. KISMET contends that this proceeding is governed entirely by U.S. law, and thus
4 does not propose to introduce or raise any issues about a foreign country's law, except to the extent
5 that a rebuttal is necessary to issues of a foreign country's law by defendants ALEX DIAZ and
6 MARTHA BARBA, in respect to which KISMET reserves all rights.

7 6. KISMET has proposed that that KISMET'S claims against the following defendants
8 shall either be severed from this trial and adjudicated separately at a later date or these defendants
9 will be dismissed without prejudice:

10 (a) Defendant Johnstown Enterprises LLC ("JOHNSTOWN"), a Nevada limited
11 liability corporation, which has at times and for certain purposes used the following address: 5828
12 W. Sweet Drive, Visalia, California 93291.

13 (b) Defendant Ramiro Lomeli Salcedo, a Mexican national.

14 (c) Defendant Raul Sanchez Navarro, a Mexican national.

15 (d) Defendant Eduardo Sanchez Navarro, a Mexican national.

16 (e) Defendant Armando Nararro Castellanos, a Mexican national.

17 (f) Defendant Diego Gonzalez Martinez, a Mexican national.

18 (g) Defendant Rodolfo Palacios Camacho, a Mexican national.

19 (h) Defendant Claudio Jiminez Vizcarra, a Mexican national.

20 (i) Defendant Fermin Medina Contreras, a Mexican national.

21 (j) Defendant Jorge Chavez Galindo, a Mexican national.

22 (k) Defendant Dolorita Alvarez Cota, a Mexican national.

23 7. KISMET advises the Court that additional discovery is still ongoing in this Adversary
24 Proceeding, along with the related Adversary Proceeding, 04-90392. Furthermore, neither KISMET
25 nor the DIAZ DEFENDANTS have deposed each others' Expert Witness(es). Nor has the stipulated
26 continued deposition of ALEX DIAZ been completed by KISMET. As such, both Kismet and the
27 DIAZ DEFENDANTS reserve all rights to amend and/or supplement (i) this Pre-trial Order, (ii)

28

1 their respective Exhibit List, and (iii) their respective Witness List as may be necessary and/or
2 appropriate.

3 The foregoing admissions having been made by the parties, and the parties having specified
4 the foregoing issues of fact and law remaining to be litigated, this order shall supplement the
5 pleadings and govern the course of the trial of this cause, unless modified to prevent manifest
6 injustice.

7 * * *

8 This case shall not be tried by a jury.

9 The trial of this case shall not be bifurcated.

10 KISMET contends that the time estimated for trial is three to four days. The DIAZ
11 DEFENDANTS have advised Kismet that they estimate the time for trial is five days

12 Respectfully submitted,

13 Dated: April 14, 2008

BAKER & McKENZIE LLP

14
15 By: /s/ Ali M.M. Mojdehi

16 Ali M.M. Mojdehi
17 Janet D. Gertz

18 Attorneys for Plaintiff
19 Kismet Acquisition, LLC, a Delaware
limited liability company

20 Dated: April 14, 2008

MORRIS & ASSOCIATES

21 By: Stephen S Morris
22 Steve Morris

23 Attorneys for Defendants
24 Mr. Alex Diaz and Martha Barba

EXHIBIT “A”

FILED
03 NOV 24 AM 10:13
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN P. LONIE, DIANE C. ONEY
AND THOMAS E. LONIE, JR. FAMILY
TRUST,

Plaintiff,

v.

JERRY LEE ICENHOWER, et al,

Defendants.

Civil No. 00-CV-612-L(LSP)

MEMORANDUM OF DECISION and
ORDER RE: DAMAGES; and
DIRECTING ENTRY OF
JUDGMENT

By Memorandum of Decision and Order filed September 25, 2003, the Court found in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim. The issue of damages remained pending; therefore, plaintiffs were ordered to provide the Court and opposing counsel with their verified calculation of any and all damages sustained in conformity with the Court's Memorandum of Decision and Order. Defendants were given an opportunity to file a response, consistent with the Memorandum of Decision and Order, to plaintiffs' calculation of damages. Plaintiffs filed a reply memorandum. The matter of damages having been fully briefed and finding this matter suitable for determination on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1), the Court enters the following Order.

...

00cv612

102 EXHIBIT "D"

Discussion

1. Money Damages

Plaintiffs submitted their verified statement of damages on October 14, 2003 to which defendants filed a statement of non-opposition to plaintiffs' damages calculations.¹

In its Memorandum of Decision and Order, the Court found the English Note to be the operative Note. The Note required defendants to pay plaintiffs the principal sum of \$550,000.00 plus advances of \$192,199.23. Both principal and advances were to bear interest at a rate of 10% per annum. The effective date of the Note was April 1, 1995. Calculated through October 31, 2003, the damages due and owing to plaintiffs are as follows:

Principal	\$ 550,000.00
Interest on Principal	472,083.33
Advances	192,199.23
Interest on Advances	<u>142,547.76</u>
Total Due	\$1,356,830.32

2. Prevailing Party

The Court finds and concludes that plaintiffs are the prevailing parties in this action. Plaintiffs may seek an award of costs under Local Civil Rule 54.1.

3. Re-registration of Lien

As noted above, defendants do not challenge the mathematical calculation of damages presented by plaintiffs. But defendants assert that plaintiffs are not entitled to "other relief" in the form of reconveyance of the title to the Villa property to plaintiffs and/or the re-registration of the prior lien on the Villa. Plaintiffs contend that re-registration of the lien is appropriate relief and such relief was generally requested in their Complaint. The Court concurs.

The English Note contained terms requiring a first priority lien to be registered in Mexico. At trial, Icenhower testified that the lien had been registered but was released

¹ Defendants reserve their contentions as to "whether or not such interest was due under the terms of the agreements in issue, and [] all of their claims and contentions with respect to the merits of the action pending a determination of whether or not an appeal will be filed." Defendants' Opposition at 2.

1 pursuant to the April 1, 1996 Agreement with Lonie. Lonie agreed to release the lien on the
 2 Villa Property for the purpose of effectuating a proposed sale of property to the World
 3 Interactive Network ("WIN"). The February 9, 1996 proposal from Icenhower to Lonie also
 4 indicated that the lien would be reinstated if the sale fell through. The sale was not
 5 consummated. Based on the evidence presented at trial, the Court found that Lonie did not
 6 cancel the requirement to re-register the Note obligation based on an alleged oral agreement
 7 with Icenhower. The Court specifically found that the failure to re-register the lien constituted
 8 a breach of the Agreement on Note contract requiring the lien to be re-registered if the sale was
 9 not completed. The Court further found that between Lonie and Icenhower, the lien was
 10 effective and constituted a security interest in Icenhower's rights, title or interest in the Villa
 11 and Icenhower breached the agreement to re-register the lien when the WIN transaction failed
 12 to go forward. The Court now finds that plaintiffs sought all legally available relief in their
 13 Complaint, including the re-registration of the lien. Requiring defendants to re-register the lien
 14 will function to secure the damages owed to plaintiffs and is an available and appropriate
 15 remedy for plaintiffs.

16 The lien on the Villa property was intended to secure the amount due and owing to
 17 plaintiffs. Because the Court has found and concluded that defendants were required under the
 18 agreement to re-register the lien in the event the property was not sold, defendants will be
 19 required to re-register the first priority lien in Mexico in accordance with the Agreement
 20 on Note and the Court's Memorandum of Decision and Order until full payment of the
 21 damages the Court has awarded plaintiffs is paid in full. Upon defendants' full payment of
 22 damages to plaintiffs, the lien shall be released.

23 Conclusion

24 Based on the foregoing, **IT IS ORDERED** awarding plaintiffs damages in the amount
 25 of \$550,000.00 in principal; 10% per annum interest on the principal from April 1, 1995;

26 ...

27 ...

28 ...

1 \$192,199.23 in advances; 10% per annum interest on the advances from April 1, 1995.²

2 **IT IS FURTHER ORDERED** that defendants shall re-register the lien on the Villa
3 property within ten (10) days of the filing of this Order. Defendants shall submit evidence of
4 the re-registration of the lien to plaintiffs within ten (10) days of the registration of the lien.
5 Upon full payment of the damages in this matter, plaintiffs shall cause the lien to be released.

6 **IT IS FURTHER ORDERED** that full payment of the damages awarded shall be
7 made within 60 days of the filing of this Order.

8 **IT IS FURTHER ORDERED** that in the event defendants fail to pay to plaintiffs the
9 full damages award within the time provided, defendants shall reconvey the Villa property,
10 free of any encumbrance, claim, lien or liability that has been placed upon the property or
11 occasioned by defendants' actions or inactions, to plaintiffs in accordance with the terms of the
12 parties' underlying agreement.

13 **IT IS FURTHER ORDERED** directing entry of judgment in plaintiffs' favor and
14 against defendants; and in counterdefendants' favor and against counterclaimants on the
15 counterclaim, and awarding damages to plaintiffs in accordance with this Order.

16 **IT IS SO ORDERED.**

17
18 Dated: 11/21/03


M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

19
20
21 **COPY TO:**

22 HON. LOUISA S. PORTER
23 UNITED STATES MAGISTRATE JUDGE
24 ALL COUNSEL
25
26

27 ² Plaintiffs have calculated the accrued interest through October 31, 2003 in the following
28 amounts: \$472,083.33 - interest on principal and \$142,547.76 - interest on advances. Plaintiffs are
entitled to accrued interest until payment is made in full for principal and advances.

ALL-STATE LEGAL 800-222-0610 FDI1 RECYCLED



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

Case Number: 3:00-cv-00612

Lonie - PLAINTIFF

v.

Icenhower - DEFENDANT
BY  DEPUTY CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOV 25 2003

JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Clerks Judgment: It is ordered and adjudged that plaintiffs are awarded damages in the amount of \$550,000.00 in principal; 10 percent per annum interest on the principal from 4/1/95; \$192,199.23 in advances; 10 percent per annum interest on the advances from 4/1/95. It is further ordered directing entry of judgment in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim, and awarding damages to plaintiffs in accordance with the 11/24/03 Order.....

11/25/03

Date

W. Samuel Hamrick, Jr.

Clerk

by R. Chambers, Deputy Clerk

Entered on 11/25/03

pre - Lorenz
ref - Porter

103
EXHIBIT "E"

EXHIBIT “B”

CSD 3026 (01/01/02)

Name, Address, Telephone No. & I.D. No.

Ali M.M.Mojdehi State Bar No. 123846

Janet D. Gertz, State Bar No. 231172

BAKER & MCKENZIE LLP

12544 High Bluff Drive, Third Floor

San Diego, California 92130-3051

Telephone: +1 858 523 6200

Attorneys for Plaintiff, KISMET ACQUISITION, LLC

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

JERRY LEE ICENHOWER dba Seaview Properties, and DONNA
LEE ICENHOWER,

Debtors.

BANKRUPTCY NO. 03-11155-LA-7

KISMET ACQUISITION, LLC

Plaintiff(s)

ADVERSARY NOS. 04-90392 and 06-90369

v.

JERRY L. ICENHOWER dba Seaview Properties, and DONNA
L. ICENHOWER fka DONNA L. HAWKS, et al.

Defendants(s)

LIST OF EXHIBITS SUBMITTED BY:

BAKER & MCKENZIE, LLP, Attorney for ☒ Plaintiff(s) ☒ Defendant(s) ☐ Other: KISMET ACQUISITION, LLC

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
1				10/07/03 Promissory Note for \$100,000 loan from Alex Diaz to Jerry Icenhower (DIAZ 87)
2				06/07/04 [Spanish] Purchase Agreement between Howell & Gardner Investors, Inc. and Alejandro Diaz Barba (DIAZ 10-14)
3				06/07/04 [Translation] Purchase Agreement between Howell & Gardner Investors, Inc. and Alejandro Diaz Barba
4				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567)
5				04/15/02 Resolution of Board of Directors of Howell & Gardner Investors, Inc. authorizing Craig Kelly to proceed on behalf of the Company (D0000169)
6				07/08/05 Letter from Maltes Farnaes at Ross, Dixon & Bell, LLP to Michael E. Busch re Davis, Trustee v. Icenhower, cc: Gerald Davis, Trustee, William Conti, and Robert Rentto
7				06/16/04 Debit Memo on UBS Account of Alejandro Diaz for \$398,663 (DIAZ 15)
8				06/16/04 Debit Memo on UBS Account of Alejandro Diaz for \$191,567 (DIAZ 16)
9				06/07/04 [Spanish] Letter of Instruction to Banco Nacional de Mexico, S.A. Trustee Department from Howell & Gardner re formalization of instructions in favor of Alejandro Diaz Barba re Vista Hermosa
10				06/07/04 [Translation] Letter of Instruction to Banco Nacional de Mexico, S.A. Trustee Department from Howell & Gardner re formalization of instructions in favor of Alejandro Diaz Barba re Vista Hermosa
11				06/10/04 Currency Conversion Sheet
12				08/05/04 [Translated by Rebeca Camarena Marroquin] Document Execution by Martha Margarita Barba de la Torre and Alejandro Diaz Barba of "Agreement of Transmission of Property in Total Execution of a Trust" (DIAZ 17 – DIAZ 41)
13				Declaration of Alejandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction
14				04/00/13 Chapter 7 Trustee's Application to Employ Bruce D. Greenberg, Inc. to Conduct an Appraisal of Mexican Real Property; Declaration

2

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				of Bruce D. Greenberg in Support of Application, with exhibits: Ex. 1: 03/10/05 Letter from Greenberg to Busch re Valuation; Services; Ex. 2: Qualifications of Greenberg; Ex. 3: CV of Gregory Lance Yaste; Ex. 4: Qualifications of Michael P. McCalley; Ex. 5: Qualifications of Byron Bridges
15				08/30/05 Notice of Intended Action and Opportunity for Hearing seeking supplemental order to retain Greenberg
16				Defendant Western Financial Assets, Inc.'s Initial Written Disclosures Pursuant to Federal Rules of Bankruptcy Procedure Rule 7026(a) and FRCP 26 (attaches corporate formation documents, 000001 – 45)
17				04/14/04 Articles of Incorporation of Western Financial Assets
18				05/08/04 [Spanish] Document re \$800,000 loan from sale of Vista Hermosa Property , with \$80,000 commission to Jerry Icenhower
19				05/08/04 [Translation] Document re \$800,000 loan from sale of Vista Hermosa Property , with \$80,000 commission to Jerry Icenhower (000217 – 225)
20				Timeline/Chart
21				Defendant Buckeye International Funding, Inc.'s Initial Written Disclosures Pursuant to Federal rules of Bankruptcy Procedure Rules 7026(a) and FRCP 26 (attaches corporate formation documents) (000046 – 98)
22				04/14/04 Articles of Incorporation for Western Financial Assets, Inc.
23				04/14/04 Sales Receipt from Eastbiz.com, Inc. for \$900.00 to Hobert B. Icenhower for services to Western Financial Assets, Inc.
24				04/15/04 Sales Receipt from Eastbiz.com, Inc. for \$188.00 to Hobert G. Icenhower for services on behalf of Western Financial Assets, Inc.
25				06/30/04 Contract for Nominee Services between Inc. Management, Inc. and Newark Enterprises, LLC, represented by Hobert Icenhower
26				06/30/04 Contract for Nominee EIN for Newark Enterprises, LLC
27				06/30/04 Articles of Organization Limited-Liability Company for Newark Enterprises in Nevada
28				04/27/04 Contract for Nominee Services between Eastbiz.com, Inc. and Johnstown Enterprises,

3

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				LLC, represented by Hobert Icenhower; Contract for Nominee EIN (page 3)
29				04/27/04 Articles of Organization Limited-Liability for Johnstown Enterprises, LLC
30				04/27/04 Sales Receipt from Eastbiz.com, Inc. to Hobert Icenhower, Johnstown Enterprises, LLC for \$993.00
31				04/28/04 Johnstown Enterprises, LLC Mandate and Resolutions opening account at Visalia Community Bank and authorizing bank to honor instructions of Hobert G. Icenhower
32				Contacts Address information for Bill Conti (CK 00246)
33				02/16/06 Answer of Defendant Craig Kelley to Second Amended Complaint for Avoidance, Recovery and Preservation of Fraudulent Conveyance
34				12/11/01 Articles of Incorporation of Howell & Gardner Investors, Inc. (CK 00011 – 18)
35				03/04/02 Save and Hold Harmless Indemnity Agreement Receipt and Transfer and Assignment from Laughlin International, Inc. to Howell & Gardner Investors, Inc. (CK 00019)
36				03/04/02 Minutes of First Meeting of Board of Directors of Howell & Gardner Investors, Inc. (CK 00020 – 22)
37				03/04/02 Acceptance of Appointment as Officer (CK 00030)
38				03/04/02 Consent to Action Without a Meeting of the Directors of Howell & Gardner Investors, Inc. (CK 00027)
39				03/04/02 Acceptance of Appointment as Director (CK 00029)
40				By-Laws of Howell & Gardner Investors, Inc. (CK 00031 – 39)
41				08/14/04 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. (CK 00080)
42				08/15/04 Resignation of Director and Officer (Craig Kelley) (CK 00081)
43				12/26/02 Annual List of Officers, Directors and Resident Agent of Howell & Gardner Investors, Inc. (CK 00023)
44				12/11/02 Minutes of Annual Meeting of Stockholders of Howell & Gardner (CK 00054)
45				12/11/03 Minutes of Annual Meeting of Stockholders of Howell & Gardner Investors, Inc.

4

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				(CK 00059)
46				12/18/03 Application for Business License for Howell & Gardner Investors, Inc. (CK 00060)
47				Certificate of Resignation of Resident Agent (Laughlin Associates, Inc.)
48				12/11/01 Resolution, Written Consent of Original Directors(s)/Officers(s) of Howell & Gardner Investors, Inc. (offer the corporation for sale) (CK 00025 – 26)
49				03/04/02 Register of Original Stock Certificate Issue (CK 00070)
50				Share Certificates issued by Howell & Gardner Investors, Inc. (CK 00071 – 79)
51				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate acquisition of Vista Hermosa) (CK 00042)
52				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate purchase rural lot in Chamela, Jalisco) (CK 00043)
53				03/04/02 Offer from Howell & Gardner to purchase beneficial trust rights of Jerry and Donna Icenhower (CK 00040)
54				03/04/02 Resolution of the Board of Directors of Howell and Gardner Investors, Inc. (CK 00044 – 45)
55				03/12/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (CK 00046 – 47)
56				Expense Register re Villa Vista Hermosa
57				03/12/02 Amendment to Contract dated 03/04/02 (CK 00048)
58				04/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (CK 00049)
59				04/01/02 Agreement to assume loan from Hobert G. Icenhower to Jerry L. Icenhower (CK 00050)
60				04/15/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re power of attorney to Peter R. J. Thompson under Mexican law to sign on behalf of the company re beneficial rights in Vista Hermosa (CK 00051)
61				05/03/02 Apostille re attached Powers of Attorney
62				2002 Escritura [Spanish] (CK 00123 – 154)
63				04/01/03 Howell & Gardner agreement to pay

5

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				\$10,000 to Hobert G. Icenhower for extension of loan on Villa Vista Hermosa (CK 00168)
64				04/01/04 Howell & Gardner agreement to pay \$5,000 to Hobert G. Icenhower for extension of loan on Villa Vista Hermosa (CK 00173)
65				Fourth Notice of Taking Further Deposition of Craig Kelley
66				Declaration of Craig Maurice Kelley
67				Settlement Agreement and Mutual Release
68				Timeline from November 1993 through December 20, 2005; diagram re Promissory Note for Cash and Assignments; diagram re Contract between H&G and Ramiro Lomeli Salcedo and Assignment
69				2002 Form 1040 U.S. Individual Income Tax Return for Jerry Lee Icenhower and Donna Lee Icenhower
70				2003 Form 8453 U.S. Individual Income Tax Declaration for an <i>e-file</i> Return; 1040 Tax Return and Schedules, California Resident Income Tax Return for Jerry Lee Icenhower and Donna Lee Icenhower
71				2004 1040 U.S. Individual Income Tax Return and Schedules for Jerry Lee Icenhower and Donna Lee Hawks-Icenhower
72				Chart re Monthly Income (all sources except \$100,000 loan), faxed 02/07/04
73				08/04/97 Letter from William L. Conti to Ernest J. Maupin, Esq. re Jerry Icenhower La Mision, et al. re "dealings with Mr. D. Donald Lonie, Jr. and the D. Donald Lonie Jr. Family Trust"
74				02/24/98 Letter from William L. Conti to Ernest J. Maupin, Esq. re Jerry Icenhower La Mision, et al.
75				11/24/03 Memorandum of Decision and Order re Damages; and Directing Entry of Judgment in <i>Stephen P. Lonie, Diane C. Oney and Thomas E. Lonie, Jr. Family Trust v. Jerry Lee Icenhower, et al. ("Lonie v. Icenhower")</i>
76				10/31/03 Defendant and Cross-Complainants' Statement in Opposition to Plaintiff's Verified Statement of Damages in <i>Lonie v. Icenhower</i>
77				Notice of Motion and Motion by Plaintiffs for Preliminary Injunction dated March 11, 2002 in <i>Lonie v. Icenhower</i> (Hearing scheduled for 5/13/02)
78				08/31/04 Declaration of Jerry L. Icenhower in Opposition to OSC re Preliminary Injunction

6

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				(Hearing dated 09/02/04), Ex. A: 03/30/95 Real Estate Purchase Contract; Ex. 2: Document prepared by Mexican Notary, Narcisso P. Lomeli Enriquez re value on Villa property; Ex. 3: Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction in <i>Lonie v. Icenhower</i> ; Ex. 4: Reply to Opposition to Plaintiffs' Verified Statement of Damage in <i>Lonie v. Icenhower</i> ; Ex. 5: Email from Diane Lonie Oney to "Mr. Miller" re Villa Vista Hermosa/El Zafiro; Ex. 6: 03/04/02 Offer from Howell & Gardener Investors, Inc. to acquire beneficial trust rights of Jerry and Donna Icenhower, Amendment to Contract dated 03/04/02, Agreement to assume loan; Ex. 7: Release of Icenhower's interest in El Zafiro and transfer to Robert Miller, trustee; Ex. 8: Document transferring Icenhower's interest in the Villa to Howell & Gardner Investments, Inc.
79				01/06/06 (Profit) Annual List of Officers, Directors and Resident Agent of Western Financial Assets, Inc. (000041)
80				01/06/04 Notice and Order from the City of Buchanan, Building Inspection Department to Howell & Gardner Investors, Inc., with attachments (000129 – 211)
81				02/11/04 Declaration of Jerry Icenhower
82				"Total Sheet" (DIAZ 507, 508)
83				05/05/06 Deposition of Jerry Lee Icenhower (PMK)
84				06/29/07 Declaration of Alejandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction in <i>Kismet Acquisition, LLC Successor in Interest to Gerald H. Davis, Chapter 7 Trustee v. Jerry Icenhower dba Seaview Properties, and Donna L. Icenhower fka Donna L. Hawks, et al. ("Kismet v. Icenhower")</i>
85				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567)
86				03/04/02 Register of Original Stock Certificate Issue (CK 00070)
87				12/10/04 [Translation] Letter from Alexandro Toulet L. to Hector Barraza, Stewart Title Guaranty de Mexico S.A. de C.V. re Title search for real property known as Villa Vista Hermosa,

7

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				located in Chamela, Municipality of La Huerta Jalisco, Mexico
88				06/07/04 [Spanish] Letter of Instruction (DIAZ 6 - 9)
89				06/07/04 [Spanish] Contract (DIAZ 10 - 13)
90				08/24/06 Email from Alexandro Diaz to Mishka re another perspective on Impulsora (DIAZ 275, 276)
91				02/18/07 [Spanish] Email from Alejandro Diaz to Alejandro, cc: Nicolas, Mishka, Eugene Kocherga, re: Synopsis - Impulsora de Chamela (NK 00034, 35)
92				11/01/05 Letter from Nancy Furse Alder to Michael E. Busch re: <i>In re Icenhower</i> and communication of offer in connection with Vista Villa and El Zafiro (DIAZ 88)
93				08/04/06 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Chamela (DIAZ 256, 257)
94				09/06/06 [Spanish] Email from Alejandro Diaz to Mishka, Eugene, and Jenka re: Draft letter to WOLFIE . . . comments???? (DIAZ 260, 261)
95				03/26/07 Email stream from Wolfgang Hahn to Nancy Alder forwarding upcoming meeting
96				03/26/07 Email stream from Wolfgang Hahn to Nancy Alder forwarding upcoming meeting
97				04/30/07 Email stream from Wolfgang Hahn to Nancy Alder, Gabriel Gallo forwarding impulsora de Chamela
98				05/02/07 [Spanish with Translation] Email from Alejandro Diaz to Wolfgang Hahn re: Demandas Frivolas
99				12/10/04 [Translation] Letter from Alexandro Toulet L. to Hector Barraza, Stewart Title Guaranty de Mexico S.A. de C.V. re Title search for real property known as Villa Vista Hermosa, located in Chamela, Municipality of La Huerta Jalisco, Mexico
100				09/06/06 Email from Alejandro Diaz to Eugene Kocherga re forwarding Draft letter to WOLFIE . . . comments????
101				01/18/07 [Spanish, with Translation] Email from Alejandro Diaz to Eugene Kocherga re forwarding Impulsora de Chamela Fraud Administration Demand (EK 00045 - 46)
102				04/23/07 [Spanish] Email string from Alejandro Diaz to Nicolas, Mishka, Jenka Kocherga and

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Eugene Kocherga re forwarding Rozes con el administrador en el fraccionamiento de Vista Hermosa (MK 00040 – 42)
103				02/18/07 [Spanish] Email from Alejandro Diaz to Alejandro Diaz, cc: Nicolas, Mishka, and Eugene Kocherga re SYNOPSIS – Impulsora de Chamlea (sic) (MK 00028, 29)
104				02/18/07 [Translation] Email from Alejandro Diaz to Alejandro Diaz
105				04/09/07 Email from Alejandro Diaz to Nicolas, Eugene Kocherga, Mishka, and Alejandro Diaz (MK 00019, 20)
106				02/17/04 [Spanish] Valuation (DIAZ 1, 2)
107				06/07/04 [Spanish] Letter of Instructions (DIAZ 8 – 9)
108				06/07/04 [Spanish] Purchase Contract
109				07/31/06 Email from Alejandro Diaz to Eugene Kocherga, Jenka, and Eugene Kocherga forwarding Davis v. Icenhower (offer made by Hahn for El Zafiro and villa) (DIAZ 312)
110				08/04/06 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Chamela (DIAZ 256, 257)
111				09/06/06 [Spanish] Email from Alejandro Diaz to Mishka, Eugene Kocherga, and Jenka re Draft letter to WOLFIE . . . comments ???? (DIAZ 260, 261)
112				06/28/06 Email from Alejandro Diaz to Nicolas re Our friend Wolfie's name (DIAZ 332)
113				E.Digital Corporation website listing names of corporate officers
114				01/30/07 SEC Registration Statement for E.Digital Corporation (S-1) Management
115				03/17/03 Exhibit 4.44 to 10K of E.Digital Corporation re loan from Alex Diaz
116				02/16/06 Federal Tax Lien recorded with the San Diego Recorder' Office
117				FAA Registry reflecting pilot certificates for Porfirio Alejandro Diaz
118				Property Profile for Eames Street property
119				Property Profile for Allen School Road address
120				02/17/05 Declaration of Michael E. Busch in Support of: (1) Second Emergency <i>Ex Parte</i> Application of Trustee to File Documents Under Seal; (2) Issuance of Temporary Restraining

9

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Order and OSC re Preliminary Injunction Hearing Preventing Defendants from Taking Any Action Regarding the Transfer of, Encumbering, or Otherwise Affecting the Title to, or Taking Any Action to Materially Affect the Condition of Certain Real Property and Personal Property; and (3) Application to File Amended Complaint
121				12/15/03 Bankruptcy Petition for Jerry L. and Donna L. Icenhower
122				12/16/03 Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines
123				09/07/04 Order Fixing Date to File Proofs of Claim and Notice Thereof
124				09/05/06 Reply to Opposition re Motion for Hearing on Enforceability of Settlement
125				06/10/04 Hobart Straight Note No. 1 for \$675,000
126				06/18/04 Hobart Straight Note No. 2 for \$398,000
127				04/12/07 Alex Diaz' and Martha Diaz' Answer to First Amended Complaint
128				02/06/04 Amendment to Selected Bankruptcy Schedules
129				11/28/06 Declaration of Alex Diaz in Support of Motion to Dismiss
130				06/29/07 Declaration of Alexandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction
131				05/03/02 [Spanish] Power of Attorney (D0000115 – 122)
132				05/02/07 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Demandas Frivolas
133				05/02/07 [Translation] Email from Alejandro Diaz to Wolfgang Hahn re Frivolous Suits
134				08/20/07 Subpoena in an Adversary Proceeding for deposition of Wolfgang Hahn
135				06/07/04 [Translation] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba (DIAZ 10 – 14)
136				06/07/04 [Spanish] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba (CK 00083 – 87, DIAZ 10 – 14)
137				06/07/04 [Translation] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba, (DIAZ 10 – 14)
138				06/07/04 [Translation] Letter to Rafael Nunez from Craig Kelley (DIAZ 9)

10

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
139				06/08/04 Apostille for [Spanish] Letter of Instruction (DIAZ 6 – 9)
140				06/08/04 Apostille for [Spanish] Letter to Instruction (D0000153 – 157)
141				06/08/04 Apostille for [Spanish] 06/16/04 Letter of Instruction (CK 00180 – 183)
142				06/16/04 [Translation] of Letter of Instruction
143				06/07/04 Resolution of the Directions of Howell & Gardner Investors, Inc. authorizing and directing Craig Maurice Kelley to sign the attached letter of instructions to Banco Nacional de Mexico, S.A. (D000055 – 58)
144				05/07/04 [Spanish] Statement of Value (D000059-62)
145				03/04/02 Offer to Purchase (CK 00040)
146				[Spanish] Documents from Mexican File (DIAZ 537 – 798)
147				Laughlin & Associates website
148				Documents re 4651 Villas Drive, Bonita, CA 91902-2451 (Mapquest, Property Transfer Record, San Diego County Treasurer Secured Property Tax Details, Property Tax Search)
149				Documents re Califormula
150				Documents re Background Report on Alejandro Diaz
151				08/25/06 Declaration of Ernest J. Maupin in Support of Position Statement on Settlement by Plaintiff and Creditor Kismet Acquisition LLC Successor in Interest to All Right Title and Interest in and to the Rights of the D. Donald Lonie, Jr. Family Trust, and Creditor Kismet Acquisition II, LLC
152				04/12/07 Counterclaim by Alex Diaz and Martha Diaz Against Kismet Acquisition, LLC and Third-Party Complaint Against Kismet Acquisition II, LLC, Axolotl S.A., Wolfgang Hahn, and Dieter Hahn
153				12/28/06 Third Tolling Agreement Between Kismet Acquisition, LLC and Suzanne Icenhower (KISMET 1389 – 1400)
154				08/17/07 Settlement Agreement and Mutual Release by and between Kismet Acquisition, LLC and Craig Maurice Kelley
155				03/04/02 Register of Original Stock Certificate

11

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Issue (KISMET 1003 – 1012)
156				10/31/06 Purchase and Assignment Agreement between Gerald H. Davis and Kismet Acquisition II, LLC; (KISMET 1479 – 90); 07/13/06 Certificate of Formation of Kismet Acquisition II, LLC (KISMET 1493 – 1499); Certificate of Formation of Kismet Acquisition; Operating Agreement of Kismet Acquisition II (KISMET 1495 – 1497) 06/21/06 Operating Agreement of Kismet Acquisition, LLC (KISMET 0007 – 13);
157				07/30/04 Letter from Ari Nieto Velez to "Jerry"; 11/03/04 Letter from Ari Nieto Velez to "Jerry"; 10/20/03 Letter from Jerry Icenhower to Ari Nieto re Chamela
158				05/11/02 [Spanish] 2002 Valuation (CK 00089)
159				04/01/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00062, 63)
160				04/01/03 Resolution of the Board of Directors of Howell & Gardner Investors re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00057, 58)
161				04/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to assume the loan with Hobert G. Icenhower, attaches loan assumption (CK 00049, 50)
162				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to pay off loan due Hobert G. Icenhower (CK 00069)
163				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re role of Jerry Icenhower (CK 00044, 45)
164				03/05/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re agreement with Jerry Icenhower handling of rentals on Vista Hermosa (CK 00171)
165				04/18/05 Diaz Defendants' Initial Disclosures Pursuant to Fed. R. Bankr. P. 7026(a)
166				05/15/04 [Spanish with Translation] Inspection (DIAZ 3 -5)
167				02/17/04 [Spanish with Translation] Valuation prepared by Fernando Rivera Martinez (DIAZ 1, 2)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 1. No Objection; Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
168				2002 Escritura [Spanish] (CK 00090 – 117)
169				2004 Escritura [Spanish] (D00003 – 12)
170				[Translation] 2004 Escritura (DIAZ 18 – 41)
171				[Spanish] Mexican Identification for Rafael Nunez (D0000249)
172				06/07/04 [Spanish] General Power of Attorney (D0000159 – 164)
173				05/10/04 [Spanish] Certificate re Taxable Value (D0000219)
174				09/13/04 [Spanish] Recording Receipt (D000014)
175				02/23/05 Opposition of Defendants Alejandro Diaz Barba and Martha B. Diaz' to Order to Show Cause Regarding Preliminary Injunction
176				Website re Villa "10" in Puerto Vallarta, Mexico
177				08/12/04 [Spanish] Check to Felipe Ignacio Vazquez Aldana Sauza (D0000307)
178				08/12/04 [Spanish] Taxable Value 1 (D00001, 2)
179				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate acquisition of Vista Hermosa) (D0000173)
180				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567) (CK 00088)"
181				08/31/04 [Spanish] Expenses for Villa Vista Hermosa, Elva Cortez Garcia (DIAZ 450)
182				08/05/04 [Spanish] Check Deposit slips (DIAZ 518)
183				[Spanish] Handwritten Expense Calculation (DIAZ 477)
184				[Spanish] Handwritten Villa Vista Hermosa Expenses (DIAZ 478, 484, 499, 483, 505-508,)
185				[Spanish] Kocherga Breakdown (DIAZ 468)
186				[Spanish] Ari Nieto Payment (DIAZ 491)
187				12/31/03 Banamex Statement for Jerry Icenhower
188				07/08/05 Letter from Maltes Farnaes to Michael E. Busch re production of documents
189				08/15/06 Email from Alejandro Diaz to Eugene Kocherga re Letter to Wolfgang – Fw: Chamela

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
190				02/18/07 [Translation] Email from Alejandro Diaz to Alejandro, cc: Nicolas, Mishka, Eugene Kocherga, re: Synopsis -- Impulsora de Chamela (NK 00034, 35)
191				04/21/07 Email from Alejandro Diaz to Nicolas, Mishka, Eugene Kocherga, and Sacha Kocherga re Appraisal of 350 Hectareas of Impulsora de Chamela - Let's get our due !!!! (NK 00044, 45)
192				Documents re Villa Vista Hermosa expenses (DIAZ 452 - 467, 469 - 476, 479 - 482, 485 - 498, 500 - 504, 509 - 517, 519 - 523)
193				12/11/01 Corporate Charter for Howell & Gardner (2 copies) (CK 00009, 10)
194				03/04/02 Resignation member of Board of Directors and Officer of Howell & Gardner (Brent Buscay) (CK 00028)
195				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing issuance of capital stock (CK 00041)
196				05/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate purchase of Villa Vista Hermosa, Chamela, Jalisco, Mexico (CK 00052)
197				12/11/02 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Craig Kelley Director of Howell & Gardner Investors, Inc. for one year (CK 00053)
198				03/04/02 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. Craig Kelley appoints Craig Kelley sole Director of Howell & Gardner Investors, Inc. (CK 00055)
199				12/11/03 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Craig Kelley Director of Howell & Gardner for one year (CK 00056)
200				03/05/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing the President of the Corporation to enter into agreement with Jerry Icenhower for handling rentals on Vista Hermosa (CK 00061)
201				05/07/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing President to enter contract for sale of property at 1207 Redbud Trail, Buchanan, Michigan (CK 00064)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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|---|--|
| 1. No Objection; Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
202				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate sale of beneficial rights in Vista Hermosa held under escritura 11,778 (CK 00065)
203				05/10/04 Certificate of Good Standing for Howell & Gardner Investors, Inc. (CK 00066 – 68)
204				06/16/04 [Spanish] Letter of Instruction (CK 00082)
205				09/10/02 [Spanish] Direccion del Registro Publico de la Propiedad re Escritura 11,778 (CK 00118-120)
206				03/08/02 Trustee's Deed between Robert P. Miller D.D.S. Profit Sharing Plan and Trust, Robert P. Miller, D.D.S. and Howell & Gardner Investors, Inc. (CK 00121, 122)
207				09/10/02 [Spanish] Direccion del Registro Publico de la Propiedad re Escritura 11,778 (CK -152-155)
208				03/12/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing President to enter into contract to purchase 1207 Redbud Trail (CK 00156)
209				03/08/02 Trustee's Deed between Robert P. Miller D.D.S. Profit Sharing Plan and Trust, Robert P. Miller, D.D.S. and Howell & Gardner Investors, Inc. (CK 00157, 158)
210				12/11/03 Minutes of Annual Meeting of Stockholder of Howell & Gardner Investors, Inc. (CK 00169)
211				12/18/03 Application for Business License for Howell & Gardner Investors, Inc. (CK 00170)
212				04/01/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00172, 173)
213				05/07/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re contract for sale of 1207 Redbud Trail (CK 00174)
214				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate sale of beneficial rights in Vista Hermosa held under escritura 11,778 (CK 00175)
215				08/14/04 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Raul Sanchez Navarro Director of

15

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Howell & Gardner Investors, Inc. (CK 00184)
216				03/04/02 Waiver of Notice of First Meeting of Board of Directors of Howell & Gardner Investors, Inc. (CK 00202)
217				06/07/04 [Spanish] Contrato de Compraventa (CK 00235-239)
218				12/14/06 Letter from Francisco Salguero , Appraiser, to Alejandro Diaz re "opinion of value estimating the value" of Villa Vista Hermosa (DIAZ 838 – 841))
219				01/15/08 [Spanish] Letter from attorneys Sanchez Acosta, S.C. , Abogados to Alejandro Diaz Barba enclosing selected documents (DIAZ 842 – 845)
220				08/05/04 [Spanish] Anexo "A" Certified copy of Escritura (DIAZ 846 – 881)
221				05/10/04 Anexo (1) Certificate of Good Standing for Howell & Gardner Investors, Inc.; attaching same translated into Spanish (DIAZ 882 – 883)
222				05/10/04 Anexo (2) Apostille attaching Articles of Incorporation for Howell & Gardner Investors, Inc. attaching Spanish translation of same (DIAZ 884 – 901)
223				06/08/04 Anexo (3) Apostille attaching [Spanish] Power of Attorney (DIAZ 902 – 911)
224				05/07/04 [Spanish] Anexo (4) Statement of Value (DIAZ 912)
225				05/07/04 [Spanish] Anexo (5) Recording Receipt (DIAZ 913)
226				[Spanish] Anexo (6) Marriage Certificate (DIAZ 914)
227				08/05/04 [Spanish] Anexo (7) Escritura (DIAZ 915 – 918)
228				06/08/04 [Spanish] Anexo (8) Contrato Privado de Compraventa for Howell & Gardner Investors, Inc. (DIAZ 919 – 923)
229				06/29/04 Anexo (9) Apostille attaching [Spanish] Letter of Instruction (DIAZ 924 – 930)
230				07/28/04 Anexo (10) Apostille attaching 06/07/04 Resolution of the Directors of Howell & Gardner Investors, Inc. authorizing and directing Craig Maurice Kelley to sign Letter of Instruction, includes Translation of Resolution (DIAZ 931 – 934)
231				08/02/04 [Spanish] Anexo (11) Letter of Instruction (DIAZ 935 – 937)

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GROUND(S) FOR OBJECTION

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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
232				08/02/04 [Spanish] Anexo (12) Letter from Banamex to Rafael Nunez Martinez and Jose Guadalupe Nande Rodriguez (DIAZ 938)
233				08/13/04 [Spanish] Anexo (13) Receipt from Banamex (DIAZ 939)
234				08/12/04 [Spanish] Anexo (15) Letter to Director of Archivo de Instrumentos Publicos from Notary (DIAZ 940)
235				08/05/04 [Spanish] Anexo (14) Document signed by Notary (DIAZ 941)
236				08/17/04 [Spanish] Anexo (16) Document and receipt (DIAZ 942 - 943)
237				08/17/04 [Spanish] Anexo (17) \$1,380,921.98 Check (DIAZ 944)
238				08/12/04 [Spanish] Anexo (18) Servicio de Adminstracion Tributaria documents (DIAZ 945 -- 949)
239				08/2004 [Spanish] Anexo (19) Banca Serfin documents (DIAZ 950 -- 953)
240				05/10/04 [Spanish] Anexo (20) Banco Nal. De Mexico (DIAZ 954)
241				08/06/99 [Spanish] Anexo (21) (DIAZ 955 -- 957)
242				04/15/97 Anexo (22) United States Passport of Peter Russell John Thompson (DIAZ 958 - 959)
243				09/07/00 Anexo (23) California Driver License of Craig Maurice Kelley (DIAZ 960)
244				04/25/00 Anexo (24) Passport of Martha Margarita Barba De Diaz (DIAZ 961)
245				[Spanish] Anexo (25) Jose Guadalupe Rodriguez and Rafael Martinez Nunez - Credencial Para Votar (DIAZ 962 - 963)
246				08/10/04 [Spanish] Anexo (26) Recibo (DIAZ 964)
247				08/10/04 [Spanish] Anexo (27) Recibo (DIAZ 965)
248				08/10/04 [Spanish] Anexo (28) Recibo (DIAZ 966)
249				08/17/04 [Spanish] Anexo (29) Recibo (DIAZ 967)
250				08/30/05 [Spanish] Anexo (30) Recibo (DIAZ 968)
251				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00001)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection; Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
252				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00002 – 12)
253				04/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00013)
254				05/27/03 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00014)
255				10/22/03 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00015)
256				Notes of communications with Howell & Gardner Investors, Inc. (LA 00016 – 74)
257				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00075)
258				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00076 – 86)
259				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00087)
260				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00088 – 98)
261				05/05/06 Deposition of Jerry Icenhower (PMK)
262				11/28/07 Deposition of Jerry Icenhower
263				08/07/06 Deposition of Michael Busch
264				08/01/07 Deposition of Craig Kelley
265				03/17/08 Deposition of Craig Kelley
266				08/13/07 Deposition of Nicolas Kocherga
267				08/15/07 Deposition of Eugene Kocherga
268				09/04/07 Deposition of Michael Kocherga Gummerson
269				09/05/07 Deposition of Martha Barba de Diaz
270				09/11/07 Deposition of Alejandro Diaz
271				09/14/07 Deposition of Alejandro Diaz
272				02/01/08 Deposition of Alejandro Diaz
273				Docket for <i>Lonie v. Icenhower</i> , US District Court Case No. 00-00612

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |
- SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
274				10/02/02 Defendant's Settlement Brief in <i>Lonie v. Icenhower</i> , , US District Court Case No. 00-00612
275				Jan 12, 2006 Transcript of hearing held in Case No. 04-90392-LA
276				Feb 23, 2006 Transcript of hearing held in Case No. 04-90392-LA
277				Oct 4, 2007 Transcript of hearing held in Case No. 04-90392-LA
278				June 28, 2007 Transcript of hearing held in Case No. 04-90392-LA
279				Jan 31, 2008 Transcript of hearing held in Case No. 04-90392-LA
280				Oct 3, 2007 Transcript of hearing held in Case No. 06-90369-LA
281				09/28/07 Declaration of Brent Buscay, Custodian of Records for Laughlin Associates, Inc. filed in Case No. 90392
282				08/09/06 Declaration of Alex Diaz in Support of Statement of Position file in Case No. 04-90392
283				09/06/06 Supplemental Declaration of Alex Diaz in Support of Statement of Position re: Determination of Settlement filed in Case No. 04-90392
284				Defendants' Settlement Brief, filed October 9, 2002
285				Memorandum of Decision and Order ("Memorandum Decision"), filed September 25, 2003
286				Memorandum of Decision and Order re: Damages; and Directing Entry of Judgment (the "Memorandum Decision on Damages"), entered November 24, 2003
287				Default of Howell & Gardner on February 23, 2007 in 06-90369
288				Default of the Debtors on September 17, 2007 in 06-90369
289				Default of Buckeye International Funding, Inc. on September 17, 2007 in 06-90369
290				Default of Columbus Enterprises, LLC on September 17, 2007 in 06-90369
291				Default of Croton Enterprises, LLC on September 17, 2007 in 06-90369
292				Default of Lynnwood Enterprises, LLC on September 17, 2007 in 06-90369
293				Default of Newark Enterprises, LLC on

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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|---|--|
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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				September 17, 2007 in 06-90369
294				Default of Utica Enterprises, LLC on September 17, 2007 in 06-90369
295				Default of Western Financial Assets, Inc. on September 17, 2007 in 06-90369
296				Default of Donna Icenhower in 04-90392
297				Default of Jerry Icenhower in 04-90392.
298				Default of Seaview Properties in 04-90392
299				01/12/04 Reporter's Transcript of 341(A) Hearing
300				03/22/04 Reporter's Transcript of 341(A) Hearing (continued)
301				Property Transfer Flow Chart (ICEN00436)
302				Jan 18, 2007 Transcript of hearing held in Case No. 04-90392-LA
303				6/29/2004 [Spanish] Letter of Instruction w/Apostille dated 6/8/04 (CK 00241-245
304				02/05/08 Mexican Notary's File (Diaz 799-837
305				Certified translations of Spanish Documents
306				Property Transfer Flow Chart (Icen00436)
307				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Complaint, March 24, 2000
308				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Amended complaint, July 27, 2000
309				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Answer to Complaint by defendant Donna Lee Icenhower, defendant Jerry Lee Icenhower, Sept. 1, 2000
310				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Notice of Motion and Motion by plaintiff for preliminary injunction, March 11, 2002
311				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Memorandum of points and authorities by plaintiff in support of motion for preliminary injunction, March 11, 2002
312				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Notice of Motion and Motion by plaintiff for summary judgment, for partial adjudication on, March 11, 2002
313				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Memorandum of points and

20

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				authorities by plaintiff in support of motion for summary judgment, March 11, 2002
314				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Richard W. Page re motion for summary judgment, March 11, 2002
315				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Ernest J. Maupin re motion for summary judgment, March 11, 2002
316				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Jose Maria Abascal re motion for summary judgment, March 11, 2002
317				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Narciso P. Lomeli Enriques by defendant Donna Lee Icenhower, defendant Jerry Lee Icenhower in suppt of oppos to mot for summary jgm and mot for preliminary injunction, May 1, 2002
318				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Order by Judge M. J. Lorenz denying pla's motion for preliminary injunction, June 18, 2002
319				Notice Pursuant to Fed. R. Evid. 902(11)
320				Nevada Secretary of State Data re: Howell & Gardner Investors, Inc.
321				Expert Report – C. Hugh Friedman
322				Expert Rebuttal Report – Eduardo A. Bustamante

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

EXHIBIT “C”

EXHIBIT C

Diaz Defendants' Exhibit List

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED BY</u>	<u>DATE ADMITTED</u>
A	Wire transfer dated 6/16/04 for \$398,663.00		
B	Wire transfer dated 6/16/04 for \$191,567.00		
C	Wire transfer dated 6/16/04 for \$675,000.00		
D	Alejandro Diaz's check to Howell & Gardner dated 6/16/04 for \$25,000.00		
E	Contract (in Spanish) dated 5/8/04 between Ramiro Lomeli Salcedo and the stock holders of Howell and Gardner and any related documents		
F	Contract (in English) dated 5/8/04 between Ramiro Lomeli Salcedo and the stock holders of Howell and Gardner and any related documents		
G	Promissory Note dated 5/8/04 signed by Howell & Gardner stockholders and any related documents		
H	Register of Original Stock Certificate Issue and Stock certificates of Howell & Gardner Investors, Inc.		
I	Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. dated 8/14/04		
J	Settlement Agreement and Mutual Release between Kelley & Kismet		
K	Declaration of Craig Maurice Kelley dated 8/17/07		
L	Receipt for taxes paid on the Villa Vista Hermosa by the Diaz Defendants		
M	Nevada Secretary of State Certificate in Good Standing for Howell & Gardner		
N	Appraisal of Villa Vista Hermosa by Ing. Fernando Rivera Martinez dated 2/17/04		
O	Appraisal of Villa Vista Hermosa by Sagaliz, S.A. de C.V. dated 12/14/06		
P	Appraisal of Villa Vista Hermosa by G. Lance Yaste & Michael P. McCalley as of 3/12/02		
Q	Appraisal of Villa Vista Hermosa by G. Lance Yaste & Michael P. McCalley as of 9/23/02		
R	Appraisal of Villa Vista Hermosa by G. Lance Yaste & Michael P. McCalley as of 9/13/04		
S	Certificate of no Liens and any related documents		

EXHIBIT C

Diaz Defendants' Exhibit List

T	Instructions to Diaz Defendants where to deposit what amount of money in payment for Villa		
U	Eduardo Sanchez Acosta's file		
V	Jorge A. Vargas' report and file		
W	Felipe I. Vazquez Aldana Sauza's file		
X	Letter from Mexican Consulate dated 11/28/07		
Y	English deed and trust documents for transfer from Kocherga to Henson, D.		
Z	Spanish deed and trust documents for transfer from Kocherga to Henson, D.		
AA	English deed and trust documents for transfer from Kocherga to Bell		
AB	Spanish deed and trust documents for transfer from Kocherga to Bell		
AC	English deed and trust documents from Kocherga to Schaffer		
AD	English deed and trust documents from Kocherga to Schaffer		
AE	English deed and trust documents from Kocherga to Henson, K.		
AF	Spanish deed and trust documents from Kocherga to Henson, K.		
AG	English deed and trust documents from Kocherga to Hendri		
AH	Spanish deed and trust documents from Kocherga to Hendri		
AI	English deed and trust documents from Kocherga to Widener, III		
AJ	Spanish deed and trust documents from Kocherga to Widener, III		
AK	English deed and trust documents from Henson, D., Bell, Schaffer, Widener, III, Hendrie and Henson, K. to Lonie		
AL	Spanish deed and trust documents from Henson, D., Bell, Schaffer, Widener, III, Hendrie and Henson, K. to Lonie		
AM	English deed and trust documents from Lonie to Icenhower		
AN	Spanish deed and trust documents from Lonie to Icenhower		

EXHIBIT C

Diaz Defendants' Exhibit List

AO	English deed and trust documents from Icenhower to Howell & Gardner Investors, Inc.		
AP	Spanish deed and trust documents from Icenhower to Howell & Gardner Investors, Inc.		
AQ	English deed and trust documents from Howell & Gardner Investors, Inc. to Diazes		
AR	Spanish deed and trust documents from Howell & Gardner Investors, Inc. to Diazes		
AS	Villa Vista Hermosa related photographs A - Z		

EXHIBIT C

Diaz Defendants' Exhibit List

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED BY</u>	<u>DATE ADMITTED</u>
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Q	Appraisal of Villa Vista Hermosa by G. Lance Yaste & Michael P. McCalley as of 9/23/02		
R	Appraisal of Villa Vista Hermosa by G. Lance Yaste & Michael P. McCalley as of 9/13/04		
S	Certificate of no Liens and any related documents		

EXHIBIT “D”

1 Fletcher W. Paddison (Cal. Bar No. 77676)
2 Malte L. Farnaes (Cal. Bar No. 222608)
3 ROSS, DIXON & BELL, LLP
4 550 West "B" Street, Suite 400
5 San Diego, California 92101-3599
6 Telephone: (619) 235-4040
7 Facsimile: (619) 231-8796

8 Attorneys for Defendants
9 ALEJANDRO DIAZ BARBA and
10 MARTHA B. DIAZ

11 UNITED STATES BANKRUPTCY COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 In Re

Case No.: 03-11155-LA7

14 JERRY L. ICENHOWER DBA Seaview
15 Properties, and DONNA L. ICENHOWER fka
16 DONNA L. HAWKS,

17 Debtors.

18 KISMET ACQUISITIONS, LLC, a Delaware
19 limited liability company,

20 Plaintiff,

21 v.

22 JERRY L. ICENHOWER DBA Seaview
23 Properties, et al.

24 Defendants.

Adv. No.: 06-90369-LA

ALEX DIAZ' AND MARTHA DIAZ'
ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

JUDGE: Hon. Louise DeCarl Adler

PARTIES

1. Answering paragraph 1, Mr. Davis is no longer the Trustee of this Estate and has no standing herein. The affairs of the Debtor have been resolved, and the Bankruptcy Court no longer has jurisdiction over this matter or the allegations of the matters set forth herein.

2. Answering paragraphs 2 through 4, the Diaz Family has no information or belief on these matters, and denies each of them.

3. Answering paragraph 5, the Diaz Family alleges that Howell & Gardner is a Nevada Corporation. Except as admitted herein, Defendants deny, generally and specifically, the remaining allegations of the above paragraph.

4. Answering paragraphs 6 and 7, Martha Diaz and her son Alex Diaz (the "Diaz Family") are citizens of Mexico and occasionally reside in San Diego. Except as admitted herein, the Diaz Family denies the remaining allegations of paragraphs 6 and 7.

5. Answering paragraphs 8 through 11, Defendants have no information or belief sufficient to answer these paragraphs, and on that basis, deny them.

JURISDICTION AND VENUE

6. Answering paragraphs 12 through 14, the Diaz Family denies that the Court has jurisdiction over this matter, that venue is proper or improper, or that this matter is a core proceeding. This matter is related to other complaints filed by Kismet Acquisition LLC and Plaintiff has made a demand for jury trial in connection with that and in connection with this matter. Mr. Davis is no longer the Trustee of this Estate and has no standing herein. The affairs of the Debtor have been resolved, and the Bankruptcy Court no longer has jurisdiction over this matter or the allegations of the matters set forth herein.

FACTUAL ALLEGATIONS

7. Answering paragraphs 15 and 17, the Diaz Family alleges that the real estate records in Mexico reflect that the Lonie Trust was the holder of a beneficial interest in a fideicomiso trust which owned the Villa Property and the El Zafiro Property pursuant to Mexican law and the Mexican Constitution, and the Lonie Trust is bound by the provisions of the fideicomiso trust and its records on the transfers therein. These records reflect that the property

was subsequently transferred to Howell & Gardner and that Howell & Gardner transferred the Villa Property to the Diaz Family in accordance with Mexican law, the Mexican Constitution and the terms and provisions of the fideicomiso trust, and the Lonie Trust and its successors are barred by Mexican law from contesting these transactions or contesting them in the U.S. Courts.

8. Answering paragraphs 16 through 35, the Diaz Family alleges that the Villa Property constitutes property located in Mexico, that title to the property was held in a fideicomiso trust, that pursuant to the terms of the fideicomiso trust, the beneficial interest was transferred by the Debtor to Howell & Gardner, that the Lonie Trust and all successors in interest had constructive notice of these transfers which were recorded in Mexico. Except as admitted herein, the Diaz Family denies, generally and specifically, the remaining allegations of those paragraphs.

9. Answering paragraphs 36, the Diaz Family alleges that transfers of property for the beneficial interest of the property are recorded in Mexico and are matters of public record and that the Lonie Trust and its successors in interest had constructive notice of these matters. Except as admitted herein, the Diaz Family denies the remaining provisions of paragraph 36.

10. Answering paragraph 37, the Diaz Family alleges that Howell & Gardner held a beneficial interest in the Villa Property as a result of transfers and records recorded pursuant to the terms and provisions of the fideicomiso trust and Mexican law and that Howell & Gardner was the sole holder of the beneficial interest to the Villa Property until the property was transferred to the Diaz Family. The Diaz Family further alleges that Howell & Gardner executed documents authorizing Banco Nacional de Mexico as Trustee to transfer the property to the Diaz Family, that the Diaz Family paid and transferred monies at the request of Howell & Gardner, and that the Diaz Family paid reasonably equivalent value and acted in good faith and acquired all right, title and interest and control over the Villa Property as of June, 2004. Except as admitted herein, the Diaz Family denies, generally and specifically, the remaining allegations of this paragraph.

11. Answering paragraphs 38 through 43, the Diaz Family denies, generally and specifically, each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

12. The Diaz Family incorporates herein paragraphs 1 through 11 above as though fully set forth herein.

13. Answering paragraphs 45 through 50, while the Diaz Family is not a party to this claim, the Diaz Family denies, generally and specifically, the allegations contained therein.

SECOND CLAIM FOR RELIEF

14. The Diaz Family incorporates herein paragraphs 1 through 13 above as though fully set forth herein.

15. Answering paragraphs 52 through 54, the Diaz Family denies, generally and specifically, each and every allegation contained therein. As of the date of the filing, title to the Villa Property was held in Howell & Gardner, pursuant to the Mexican laws, the Mexican Constitution and the terms and conditions of the fideicomiso trust. The Lonie Trust was bound by this as is their successor in interest.

THIRD CLAIM FOR RELIEF

16. The Diaz Family incorporates herein paragraphs 1 through 15 above as though fully set forth herein.

17. Answering paragraphs 56 through 61, the Diaz Family denies, generally and specifically, each and every allegation therein and alleges that:

(a) Following the transfer in approximately March, 2002, Howell & Gardner was the holder of the beneficial interest in the Villa Property under the terms of the fideicomiso trust and under Mexican law.

(b) Following the transfer in March 2002, Howell & Gardner was shown on all real estate records in Mexico as the holder of the beneficial interest in the fideicomiso trust, with Debtor holding no interest.

(c) The Diaz Family acquired title from the Banco Nacional de Mexico pursuant to the terms and provisions of the fideicomiso trust, Mexican law and the Mexican Constitution.

(d) The Diaz Family acquired the Villa Property for value and in good faith.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

18. The Diaz Family alleges that claims in this Complaint are subject to the exclusive jurisdiction of the Mexican courts.

SECOND AFFIRMATIVE DEFENSE

19. The Diaz Family alleges that these issues are decided and controlled by Mexican law and the Mexican Constitution. Under Mexican law, Kismet is bared from any relief against the Diaz Family in this action.

THIRD AFFIRMATIVE DEFENSE

20. The terms and provisions of the fideicomiso trust which are binding upon the Lonie Trust and its successor in interest, Kismet Acquisition LLC, provide that the Lonie Trust and therefore, Kismet, cannot dispute title to property transferred pursuant to the terms and provisions of the fideicomiso trust.

21. The fideicomiso trust through which the Lonie Trust held beneficial title to the Villa Property contains a covenant that forbids this legal action by Kismet as assignee of the Lonie Trust.

FOURTH AFFIRMATIVE DEFENSE

22. These transactions involve transactions pursuant to the terms and provisions of the fideicomiso trust, the Mexican Constitution and Mexican law, and are governed by these.

23. The Diaz Family reviewed title to the Villa Property in Mexico and relied upon the records of the property in Mexico, which provided that the property was held in a fideicomiso trust with Howell & Gardner as beneficiary. The Diaz Family further alleges that the Lonie Trust and its successor in interest had constructive notice of these matters. The Diaz Family relied upon Mexican records to purchase its interest from Banco Nacional de Mexico for value and in good faith and pursuant to the provisions of Mexican law.

24. Accordingly, Kismet, as assignee of the Lonie Trust, is equitably estopped from bringing this action.

FIFTH AFFIRMATIVE DEFENSE

25. The Diaz Family reviewed title to the Villa Property in Mexico, relied upon the records of the property in Mexico, provided that the property was held in a fideicomiso trust with Howell & Gardner as beneficiary. The Diaz Family further alleges that the Lonie Trust and its successor in interest had constructive notice of these matters. The Diaz Family relied upon Mexican records to purchase its interest from Banco Nacional de Mexico for value and in good faith and pursuant to the provisions of Mexican law.

SIXTH AFFIRMATIVE DEFENSE

26. Kismet Acquisition is limited to recovery of the funds paid by the Diaz Family and is not entitled to transfer any title interest located in Mexico.

SEVENTH AFFIRMATIVE DEFENSE

27. The relief sought by Kismet Acquisition is barred by law.

EIGHTH AFFIRMATIVE DEFENSE

28. Kismet is barred and precluded from recovery in this action by virtue of the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

29. Kismet is barred and precluded from recovery in this action by virtue of the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

30. Kismet is barred and precluded from recovery in this action by virtue of the doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

31. The Complaint, and each purported cause of action therein directed against the Diaz Family, fails to allege facts sufficient to constitute a cause of action.

TWELFTH AFFIRMATIVE DEFENSE

32. The Complaint, and each alleged cause of action therein, fails to set forth facts sufficient to entitle Kismet to an award of attorneys' fees against the Diaz Family.

THIRTEENTH AFFIRMATIVE DEFENSE

33. Upon information and belief, the Diaz Family alleges that the Complaint filed against the Diaz Family was brought without reasonable care and without a good faith belief that there was a justifiable controversy under the facts and the law which warranted the filing of each cause of action in the Complaint alleged against the Diaz Family, and that Kismet is therefore responsible for all the Diaz Family's necessary and reasonable defense costs, including attorneys' fees.

FOURTEENTH AFFIRMATIVE DEFENSE

34. Upon information and belief, the Diaz Family alleges that the Complaint filed against the Diaz Family was brought for malicious purposes and in order to injure the Diaz Family and without a good faith belief that there was a justifiable controversy under the facts and the law which warranted the filing of each cause of action in the Complaint alleged against the Diaz Family, and that Kismet is therefore responsible for all the Diaz Family's necessary and reasonable defense costs, including attorneys' fees, and punitive damages.

FIFTEENTH AFFIRMATIVE DEFENSE

35. The Complaint and each cause of action is barred by public policy considerations and by the principles of comity.

SIXTEENTH AFFIRMATIVE DEFENSE

36. Kismet has failed to join an indispensable party to this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

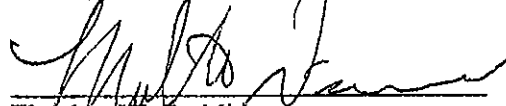
37. That as to the Complaint, the Diaz Family presently has insufficient information or knowledge on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. The Diaz Family reserves the right to assert additional defenses in the event discovery indicates they would be appropriate.

WHEREFORE, the Diaz Family requests that:

1. To be provided with a trial by jury as guaranteed by the U.S. Constitution; Federal Rule of Civil Procedure 38(b); and Local Rule 7040;
2. Kismet take nothing by way of its complaint;
3. The Diaz Family be compensated for its attorneys fees and costs herein.

1 Dated: April 12 2007

ROSS, DIXON & BELL LLP,



Fletcher W. Paddison

Malte L. Farnaes

Attorney for Defendants

ALEJANDRO BARBA DIAZ AND

MARTHA DIAZ

EXHIBIT 7

COPY

CSD 3021 [08/21/00]

Name, Address, Telephone No. & I.D. No.

Ali M.M. Mojdehi, State Bar No. 123846

Janet D. Gertz, State Bar No. 231172

Baker & McKenzie LLP

12544 High Bluff Drive, Third Floor

San Diego, California 92130-3051

Telephone: (858) 523-6200

Attorneys for Plaintiff, Kismet Acquisition, LLC

Order Entered on
 April 18, 2008
 by Clerk U.S. Bankruptcy Court
 Southern District of California

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 325 West "F" Street, San Diego, California 92101-6991

In Re

JERRY L. ICENHOWER dba SEAVIEW PROPERTIES, and DONNA L. ICENHOWER

BANKRUPTCY NO. 03-11155-LA-7

Debtor.

KISMET ACQUISITION, LLC, a Delaware limited liability company,

ADVERSARY NO. 04-90392

Plaintiff(s)

v.

JERRY L. ICENHOWER, an individual, et al.

Date of Trial: April 21 - 24, 2008

Time of Trial: 10:00 a.m.

Defendants(s)

Name of Judge: Hon. Louise DeCarl Adler

PRE-TRIAL ORDER

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 50 with exhibits, if any, for a total of 50 pages, is granted.

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DATED: April 18, 2008

Jud



Signature by the attorney constitutes a certification under Fed. R. of Judge, United States Bankruptcy Court granted by the court.

Submitted by:

Baker & McKenzie, LLP

(Firm name)

By: /s/ Ali M.M. Mojdehi

Attorney for Movant

Kismet Acquisition, LLC

CSD 3021

SDODMS1/688331.1

1 Ali M.M. Mojdehi, State Bar No. 123846
Janet D. Gertz, State Bar No. 231172
2 **BAKER & McKENZIE LLP**
12544 High Bluff Drive, Third Floor
3 San Diego, CA 92130-3051
Telephone: +1 858-523-6200

4 Attorneys for Plaintiff
5 KISMET ACQUISITION, LLC

6
7
8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re

12 JERRY LEE ICENHOWER dba Seaview
Properties, and DONNA LEE ICENHOWER,
13 Debtors.

14 KISMET ACQUISITION, LLC,
15 Plaintiff,

16 v.

17 JERRY L. ICENHOWER an individual; et al.
18 Defendants.
19

Case No. 03-11155-LA-7

Chapter Number 7

Adv. Proc. No: 04-90392

JOINT PRE-TRIAL ORDER

DATE: April 21-24, 2008

TIME 10:00 a.m.

DEPT: 2

JUDGE: Hon. Louise DeCarl Adler

20
21
22
23 **NATURE OF ACTION**

24 This is an action for:

25 (i) Preservation and Recovery of Avoided Fraudulent Transfers (11 U.S.C. §§ 550, 551);

26 (ii) Declaratory Relief; and

27 (iii) Injunctive Relief.

28 ///

The Parties

1. The plaintiff is Kismet Acquisition, LLC ("KISMET"). KISMET is a limited liability corporation organized under the laws of Delaware with its principal place of business in San Diego, California.

2. Defendant Jerry L. Icenhower ("MR. ICENHOWER") is an individual with his principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case.

3. Defendant Donna L. Icenhower ("MRS. ICENHOWER") is an individual with her principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case.

4. Defendant Howell & Gardner Investors, Inc. ("HOWELL & GARDNER") is a corporation organized under the laws of the state of Nevada.

5. Defendant Martha Margarita Barba de la Torre ("MS. BARBA") is an individual and Mexican citizen with a residence at the following address: 1781 Mother Grundy Truck Trail, Jamul, California, 91935.

6. Defendant Alejandro Diaz-Barba ("MR. DIAZ") is an individual and Mexican citizen with a residence at the following address: 222 Dovary Road, Chula Vista, California, 91910.

JURISDICTION AND VENUE

1. KISMET asserts that the United States District Court for the Southern District of California has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. This Court has referred jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(A), (E), (J), and (O) and 11 U.S.C. § 544, and under General Order 312-D of the United States District Court for the Southern District of California.

2. Defendants MR. DIAZ AND MS. BARBA (collectively, "DIAZ DEFENDANTS") reserve all rights to contest that this Court has jurisdiction over any action affecting title to real property in Mexico.

3. KISMET asserts that venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1409(a) because the underlying bankruptcy case is pending in this district.

4. KISMET informs the Court that, Defendants have advised us that they contend that venue in the Southern District of California is improper.

5. KISMET asserts that this adversary proceeding for recovery of an avoided transfer is a core proceeding within the meaning of 28 U.S.C. §§157(b)(1) and (2)(B), (E), (F), (H) and (O).

6. Defendants have advised KISMET of no particular position on whether this adversary proceeding is "core," but otherwise appear to intend to contest this issue.

ADMITTED FACTS

The following facts are admitted and require no proof:

1. That KISMET is a limited liability corporation organized under the laws of Delaware with its principal place of business in San Diego, California.

2. That MR. ICENHOWER is an individual with his principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case. [Debtors' Answer to Complaint in Adv. Proc. 06-90369; ¶2 Bankruptcy Petition.]

3. That MRS. ICENHOWER is an individual with her principal residence in the County of San Diego, in the State of California, and is one of the debtors in the underlying Chapter 7 case. [Debtors' Answer to Complaint; ¶3 Bankruptcy Petition.]

4. That MS. BARBA is an individual with a place of residence in San Diego County, California [Diaz Answer to First Amended Complaint dated April 16, 2007 ¶5 (hereinafter "Diaz Answer")], and who has testified that her "current residence" and the residence she spends "most of her time" is the following address: 1781 Mother Grundy Truck Trail, Jamul, California, 91935. [Deposition of Martha Barba dated Sept. 5, 2007 at 10-12].

5. That MR. DIAZ is an individual who has lived in San Diego County, California, since 1992, [Diaz Deposition Sept. 11, 2007 at 21], who has testified that his "current place of residence" and where he "live[s]" is at the following address: 222 Dovary Road, Chula Vista, California, 91910. Prior to 2003, his primary place of residence was at the following address: 4651 Villas Drive and/or Place, Bonita, California, 91902. [Deposition of Alex Diaz dated Sept. 11, 2007 at 28, 98-100].

1 6. That MR. DIAZ is an experienced businessman who has, for the past 15 years, made
2 a number of real estate investments, and is on the board of directors of one or more companies.

3 7. That KISMET is assignee and successor in interest to the claims against the Debtors
4 of Stephen E. Lonie, Diane C. Oney and Thomas E. Lonie, as trustees ("Trustees") of the D. Donald
5 Lonie, Jr., Family Trust ("Lonie Trust"), original creditors of the Debtors in the underlying Chapter
6 7 case. [Notice Of Transfer Of Claim Other Than For Security, Main Case Docket Entry No. 69;
7 Diaz Answer ¶34.]

8 8. That MS. BARBA owns XLNC1, a California Corporation, with a primary place of
9 business at 1690 Frontage Road, Chula Vista, CA 91911. That MS. BARBA is an officer and
10 director of other companies having a principal place of business in San Diego County, California,
11 including International Institute of Photographic Arts, Inc., a California Corporation with a principal
12 place of business at 1690 Frontage Road, Chula Vista, CA 91911; Califormula, Inc., a California
13 corporation, with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911, and
14 XLNC1. That MS. BARBA is the agent for service of process for these same companies at 1690
15 Frontage Road, Chula Vista, CA 91911. [Deposition of Martha Diaz, Sept. 5, 2007 10; California
16 Secretary of State web site.] That MS. BARBA is a member of Pacific Wings, LLC, a California
17 limited liability company with a principal place of business at 4025 Kearny Villa Rd San Diego, CA
18 92123. [*Id.*]

19 9. That MR. DIAZ is an officer and director of Califormula, Inc., a California
20 corporation, with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911,
21 Radio Computing Latinoamerica Inc., a California Corporation (suspended) with a principal place of
22 business at 1231 Third Ave., Ste. F, Chula Vista, CA 91911 and XLNC1, a California Corporation,
23 with a principal place of business at 1690 Frontage Road, Chula Vista, CA 91911. That MR. DIAZ
24 is a member of Pacific Wings, LLC, a California limited liability company with a principal place of
25 business at 4025 Kearny Villa Rd San Diego, CA 92123. That MR. DIAZ is a member of Rain
26 Forest Ventures, LLC a California limited liability company with a principal place of business at
27 4651 Villas Place, Bonita, CA 91902. [*Id.*; California Secretary of State web site.] That MR. DIAZ
28

1 is an officer of and agent for service of process for Expo Radio, Inc., a California Corporation
2 (suspended), with a primary place of business at 1690 Frontage Road, Chula Vista, CA 91911. [*Id.*]

3 10. That Defendant MR. DIAZ owns multiple parcels of real property in San Diego
4 County, California. [Deposition of Alex Diaz, Sept. 11, 2007; Answer to First Amended Complaint
5 dated March 23, 2005, ¶ 8]

6 11. That Defendant HOWELL & GARDNER is a corporation organized under the laws
7 of the state of Nevada. [Entry of Default.]

8 12. That Defendant HOWELL & GARDNER'S corporate status has been revoked by the
9 State of Nevada, and it has no agent appointed for service of process. [Entry of Default.]

10 13. That a default was entered against Defendant HOWELL & GARDNER in this action.
11 [Entry of Default.]

12 14. That the Plaintiff, as successor in interest to the Trustee, is entitled to avoid the pre-
13 petition purported transfers by the Debtors, MR. ICENHOWER AND MRS. ICENHOWER, of the
14 Villa Real Property Trust to Defendant Howell & Gardner. [Entry of Default.]

15 15. That under that certain Purchase and Assignment Agreement dated as of October 19,
16 2006, Plaintiff received an assignment of all right, title and interest in or to all assets of the Debtors'
17 bankruptcy estate, including without limitation, all rights, and/or causes of action in the bankruptcy
18 case, whether against third parties and/or against the Debtors, whether asserted or yet to be asserted,
19 and whether arising in bankruptcy or nonbankruptcy law, including without limitation, the above
20 listed case, along with all other rights, privileges, and benefits of the Trustee and the Debtors'
21 bankruptcy estate arising out of, related thereto, or in connection therewith ("Assignment"). [Order
22 Granting Sale of Assets Outside of Ordinary Course of Business [Main Case Docket Entry No. 95.]

23 16. That on December 7, 2006, this Court entered an Order Granting Sale of Assets
24 Outside of Ordinary Course of Business approving the Assignment. [Order Granting Sale of Assets
25 Outside of Ordinary Course of Business [Main Case Docket Entry No. 95.]

26 17. Pursuant to this Court's Order entered December 19, 2006, Kismet was substituted in
27 as the named Plaintiff in this action, replacing Gerald H. Davis, Chapter 7 Trustee ("Trustee").
28 [Docket Entry No. 195.]

18. That MR. DIAZ is a scheduled unsecured creditor of this bankruptcy estate based on a loan of \$100,000 made to MR. ICENHOWER on or about October 7, 2003 [See Answer to First Amended Complaint dated March 23, 2005, ¶38; Diaz Answer ¶ 5; Declaration of Alex Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction dated June 8, 2007 ¶¶9, 10, 12, 13; Debtors' Schedules].

19. That a claims bar date of December 6, 2004 was set in the Debtors' Chapter 7 case and MR. DIAZ did not file a claim [See Court Docket; Claims Register; Diaz Answer ¶5].

20. That not until early in 2004, after the underlying Chapter 7 case was filed, did the Debtors disclose to the Chapter 11 Trustee that on or about March 4, 2002 the Debtors purported to sell, transfer, assign or otherwise convey their interest in the Villa Real Property Trust to Howell & Gardner. [See Answer of Debtors in Adv. Proc. 06-90369 ¶ 22; Transcript of Debtors' Section 341(a) Meeting of Creditors (judicially noticeable fact of which KISMET hereby requests that this Court take judicial notice under Fed. R. Evid. 201(d).]

21. That the consideration stated for the transfer from Howell & Gardner to the DIAZ DEFENDANTS, according to the deed document, recites a value of MX \$7,508,800. This translates, at an exchange rate of about 11.4 to 1, to a price of approximately \$657,168 U.S. Dollars as of August 5, 2004. [Judicially noticeable facts, of which Plaintiff requests that the Court take judicial notice under Fed. R. Evid. 201(d); see, e.g., Exhibit "M" to the First Amended Complaint ("Official Publication" self-authenticating under Fed. R. Civ. Proc. 44(a)(2); <http://www.panda.com/convert/classic> (online currency converter function).]

22. That of the consideration paid by the DIAZ DEFENDANTS for the transfer of the Villa Property, other than for \$25,000, the checks and/or wire payments were sent by the DIAZ DEFENDANTS to other entities than HOWELL & GARDNER. [See Declaration of Alex Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction dated June 8, 2007 ¶12.]

23. That Defendant MS. BARBA'S formal name is Martha B. Diaz and that she is also sometimes known as Margarita Barba de La Torre, Martha Barba Diaz, Martha M. Diaz, Martha Margarita Diaz, and Martha B. Diaz. [Answer to First Amended Complaint ¶7].

1 24. That Defendant MR. DIAZ'S formal name is Porfirio Alejandro Diaz Barba and that
2 this is frequently shortened for the sake of simplicity to Alejandro Diaz-Barba, Alex Diaz, Porfirio
3 Alejandro Diaz, Alejandro B. Diaz, Porfirio A. Diaz, and Porfirio Diaz. [Answer to First Amended
4 Complaint ¶8.]

5 25. That the DIAZ DEFENDANTS each admit that an actual controversy has arisen and
6 now exists between Plaintiff, on the one hand, and Defendant MR. DIAZ and defendant MS.
7 BARBA, on the other hand. [Answer to First Amended Complaint ¶65.]

8 26. That, in addition to the purported agreement for the transfer of the Villa Property to
9 HOWELL & GARDNER, the Debtors retained a right to receive the proceeds of any sale of the
10 Villa Property which is above \$1.5 million, (later amended to \$1.4 million, and a right to buy the
11 Villa Property back from HOWELL & GARDNER. The transfer agreement also purported to give
12 the Debtor MR. ICENHOWER, management and control of the Villa Property, the right to all profits
13 and responsibility for all costs, notwithstanding the purported transfer to HOWELL & GARDNER.
14 [Debtors' Answer in Adv. Proc. 06-90369 ¶23.]

15 27. During proceedings and settlement negotiations conducted in the District Court
16 Litigation in October 2002, the Debtors represented that they were in control of the Villa Property,
17 despite the purported transfer to HOWELL & GARDNER, and actively negotiated a sale of their
18 interests to the Lonie Trust. Specifically, the settlement brief filed by the Debtors, stated "The Villa
19 has been continuously marketed for the sum of \$2,500,000 by MR. ICENHOWER, and has been
20 appraised at that value several years ago There has been interest around the \$1,500,000 level,
21 but MR. ICENHOWER has been unwilling to part with it a[t] this price. Rental opportunities for the
22 Villa have improved since the "9/11" tragedy and the Villa is currently operating at a "break even."
23 In short, the ICENHOWERS are able to hold the property while they seek the right buyer" The
24 brief then goes on to offer a settlement option that includes a "transfer of the beneficial interest in the
25 [Real Property Trust] for the Villa. . . ." [Debtors' Answer in Adv. Proc. 06-90369 ¶ 28.]

26 28. That on November 24, 2003 judgment of the District Court was entered against
27 Defendants MR. ICENHOWER AND MRS. ICENHOWER in the action, *Stephen P. Lonle, Diane*
28 *C. Oney and Thomas E. Lonle, Jr. Family Trust v. Jerry Lee Icenhower, et al.*, Civ. No. 00-CV-612,

United States District Court, Southern District of California, which judgment provided that MR. ICENHOWER AND MRS. ICENHOWER either (a) pay damages in the amount of \$1,356,830.32 within 60 days of the filing of the Court's Order on November 24, 2003 and (b) re-register the lien on the Villa Property within 10 days of the filing of the Court's Order on November 24, 2003 or (c) shall reconvey the Villa Property, free from any encumbrance, claim, lien, or liability that has been placed on the property or occasioned by MR. ICENHOWER AND MRS. ICENHOWER's actions or inactions to the Lonie Trust in accordance with the terms of the underlying agreement between the parties. The judgment remains pending and the District Court Proceeding remains open. [Memorandum of Decision and Order Re: Damages; and Directing Entry of Judgment, Civ. No. 00-CV-612, United States District Court, Southern District of California (judicially noticeable fact, of which this Court is requested to take judicial notice under Fed. R. Evid 201(d), a true and correct copy of the Court's Memorandum of Decision and Order is attached hereto as Exhibit "A").]

RESERVATIONS AS TO FACTS

The reservations as to the facts recited in paragraphs 1-27 above are as follows:

1. As for admitted fact number 14, DIAZ DEFENDANTS reserve the right to claim that KISMET is not entitled to relief as to them.
2. As for admitted fact number 20, DIAZ DEFENDANTS reserve the right to claim that KISMET is not entitled to relief as to them.
3. As for admitted fact number 25, KISMET reserves the right to claim that that other indicia of control were present.
4. As for admitted fact number 26, DIAZ DEFENDANTS reserve the right to claim that KISMET is not entitled to relief as to them.
5. As for admitted fact number 27, DIAZ DEFENDANTS reserve the right to claim that KISMET is not entitled to relief as to them.
6. As for admitted fact number 21, KISMET reserves the right to claim that the consideration stated was not actually paid as consideration for the transfer, but was for other purposes.

7. As for admitted fact number 22, KISMET reserves the right to claim that such amount was not actually paid as consideration for the transfer of the Villa Property, but was for other purposes.

JUDICIALLY NOTICEABLE FACTS

KISMET contends that the following facts, though not admitted, are judicially noticeable and accordingly requests the Court to take judicial notice of the same pursuant to Fed. R. of Evid.

201(d). The DIAZ DEFENDANTS do not join in KISMET'S request:

1. Pursuant to the Court's Order dated November 9, 2007 [Docket Entry No. 329.]:

The chain of title in the public records coupled with Mr. Diaz's admissions of what he actually knew--e.g., Icenhower's continuing control and ostensible ownership of the Villa Property--gave Diaz the duty to enquire further as a reasonably prudent person with his level of business sophistication would do. Specifically, the chain of title showed that Icenhower owned the Villa Property two years earlier and continued to exercise control and, indeed, ostensible ownership. This would cause a reasonable person to investigate the agreement between Icenhower and Howell & Gardner Investors, Inc. and the prior sales price. Further, Diaz admits he knew of Icenhower's bankruptcy which would have triggered enquiry notice as to all future dealings with him. Icenhower--allegedly a stranger to Diaz (although there is evidence that Kocherga, Diaz's childhood friend, and Icenhower shared a business office in Coronado) borrowed \$100,000 U.S. from Diaz immediately before filing bankruptcy. Then, Diaz was aware that "Icenhower" Investments--was going to receive a large portion of the sales price of the Villa Property, rather than Howell & Gardner Investors, Inc., the putative owner. This combination of facts and circumstances should have triggered further enquiry.

2. Pursuant to the Court's Order dated March 6, 2008 [Docket Entry No. 432.]:

1. Venue objection is procedurally improper. It should have been brought as a motion under FRCP 12(b) which should have been part of defendant's first response to the complaint. Because it was not brought as a "first response," it is a (a) untimely and (b) waived. *Richards v. Lloyd's of London*, 135 F. 3d 1289, 1292 (9th Cir. 1998); 12 Moore's Federal Prac. -- Civil, Sec. 12.21.

2. Prior actions of the actual parties to the agreements establishes that the forum selection clause (in the fideicomiso trust document which was NOT attached as an exhibit) purporting to control the venue of litigation was ignored by those parties as permissive and limited in scope. Otherwise how could parties to the agreements (the Lonies and the defendants) have litigated a breach of contract disputed involving the property in the U.S. District Court without asserting jurisdiction in Mexico was exclusive?

3. The laches defense fails as a matter of law. This action was timely filed pursuant to Section 544(a). Further, contrary to movants' contention, this matter is a core proceeding, arising under Title 11. See 28 U.S.C. Sec. 157(b)(2)(F) [avoidance actions to recover fraudulent transfers are core matters]. Even though the Sec. 544(b) looks to state law, there is a strong policy that "core" actions be litigated in bankruptcy court.

3. Pursuant to this Court's Order dated December 11, 2007 [Docket Entry No. 348.]:

In defense of the avoidability of the fraudulent conveyance claim of Plaintiff, Diaz asserts the affirmative defense of good faith and reliance on counsel. However, during his deposition, Diaz declined to answer questions about the advice he was given by counsel, claiming the attorney/client privilege. Court holds that it is well-settled that placing reliance on advice of counsel in issue waives the privilege. See *Chevron v. Pennzoil*, 974 F.2d 1156, 1162 (9th Cir. 1992); *US v. Bilzerian*, 926 F.2d 1285, 1292-3 (2nd Cir. 1991). As noted by the court in *In re Gibco*, 185 F.RD.296 (D. Colo., 1997), a defense of good faith to a fraudulent conveyance actions contains both objective and subjective components. While the Court can determine whether objective circumstances would have placed Diaz on inquiry notice, to determine his subjective intent--"what he and his counsel knew about the circumstances surrounding the transfer and the purposes they sought to serve by making the transfer" (*Gibco* at p. 301) -- can only be established by Diaz' testimony about what his Counsel told him. Therefore, to the extent Diaz has raised the affirmative defense of "good faith," he has waived the attorney/client privilege as to evidence relevant to that defense.

4. Pursuant to this Court's Order dated February 13, 2007 [Docket Entry No. 216]:

TRANSFER AT ISSUE:

[Diaz] Incorrectly focuses on transfers that occurred after debtor fraudulently conveyed his beneficial trust interest to H&G. However, this is a misapplication of Sec. 544(b). Sec. 544(b) enables a court to avoid a transfer of the interest of the debtor in property. Necessarily, we must focus on the transfer between the debtor and the initial transferee (H&G) and whether it was fraudulent to an actual creditor of debtor. Once that transfer was completed, debtor and estate no longer had an interest in the property which was avoidable. [Both the *Maxwell* and *Midland* cases cited by [Kismet] agree with the majority view that property fraudulently conveyed is not property of the debtor or Property of the Estate.

SUBJECT MATTER JURISDICTION:

For purposes of determining subject matter jurisdiction (SMJ) over the Sec. 544(b) and Sec. 550 claims, we look to the initial transfer to determine whether we have jurisdiction, not the later transfers. There is no jurisdictional challenge to the initial transfer. As correctly observed by Kismet, there is a statutory grant of SMJ over claims to avoid and recover a fraudulent conveyance of an interest in real property and, so long as the Court has personal jurisdiction over the

defendants (as we do over the Diaz defendants), we have the ability to order the person to execute a conveyance or to enter a money judgment for its value, subject to enforcement through contempt powers, **EVEN THOUGH IT INDIRECTLY AFFECTS TITLE TO REAL PROPERTY OUTSIDE OUR TERRITORIAL BOUNDARIES.** See *Fall v. Easton*, 215 U.S. 1 (1909); see also Opposition, p. 5-6. Court rejects Movant's claim that we will be required to cancel the transfer of title between the Mexican Bank and the Diaz defendants. Rather, we can order the Diaz defendants to create a fideicomiso trust and order them to convey the property to that trust with the estate holding the beneficial interest.

AVOIDANCE ACTIONS:

The presumption against extraterritoriality is not implicated by this complaint. Once we re-focus our attention to the correct transfer (between debtor & H&G), the "center of gravity" is indisputably within the U.S. Both [Diaz] and Kismet agree that we apply the presumption against extraterritoriality only if the "center of gravity" lies outside the U.S.

REMAINING ISSUES OF FACT

The following issues of fact, and no others, remain to be litigated upon the trial:

1. Whether the transfer avoidable as to Defendant HOWELL & GARDNER was constructively fraudulent or actually fraudulent.
2. Whether Defendant MR. DIAZ is an immediate or mediate transferee of HOWELL & GARDNER.
3. Whether Defendant MS. BARBA is an immediate or mediate transferee of HOWELL & GARDNER.
4. Whether Defendant MR. DIAZ took for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer to HOWELL & GARDNER.
5. Whether Defendant MS. BARBA took for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer to HOWELL & GARDNER.
6. Whether KISMET is barred by laches from the relief it seeks from the DIAZ DEFENDANTS.

7. Whether KISMET is estopped from the relief it seeks from the DIAZ DEFENDANTS.

EXHIBITS

The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto, are as follows:

Plaintiff's Exhibits: See Exhibit "B".

Defendant's Exhibits: See Exhibit "C".

WITNESSES

Plaintiff's Witnesses

1. Fact Witnesses

- (a) Alex Diaz (ADDRESS ADMITTED ABOVE)
- (b) Martha Barba (ADDRESS ADMITTED ABOVE)
- (c) Jerry Icenhower (ADDRESS ADMITTED ABOVE)
- (d) Craig Kelley (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (e) Eugene Kocherga (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (f) Michael Kocherga (ADDRESS KNOWN TO DIAZ DEFENDANTS)
- (g) Wolfgang Hahn c/o Baker & McKenzie LLP, 12544 High Bluff Drive, Third Floor, San Diego, CA 92130
- (h) All witnesses identified and/or designated by Diaz Defendants not otherwise

included herein.

2. Expert Witness

- (a) C. Hugh Friedman
Professor of Law
University of San Diego
5998 Alcalá Park
San Diego, CA 92110-2492
(619) 260-4600

3. Rebuttal Expert Witness

(a) Lic. Eduardo A. Bustamante
BUSTAMANTE, ESCANDÓN Y PAREYÓN, S.C., Abogados, Blvd. Agua
Caliente No. 10535, Suite 901, 22420, Tijuana, B.C. Mexico
01152) 664-6817408
01152) 664-6863983

Defendant's Witnesses

1. Fact Witnesses

- (a) Alejandro Diaz - Defendant
- (b) Martha Diaz-Barba - Defendant
- (c) Jerry Icenhower - Debtor/Defendant
- (d) Craig Kelley - Defendant
- (e) Raul Sanchez
- (f) Wolfgang Hahn
- (g) Nicholas Kocherga
- (h) Eugene Kocherga
- (i) Michael Kocherga
- (j) Hobart Icenhower
- (k) Diane Oney
- (l) Eduardo Sanchez Acosta
- (m) Alberto Szekely
- (n) Guilleimo Alejandro Rivera Gonzalez
- (o) Lorenzo Landeros
- (p) Felipe I. Vazquez Aldana Sauza

2. Expert Witnesses

- a. Jorge A. Vargas - Mexican Real Property law

3. Rebuttal Expert Witness

- a. The court is advised that the Diaz Defendants have failed to provide Kismet with the identity of any witness they intend to call as an expert to rebut C. Hugh Friedman.

LIMINE REQUEST

KISMET requests that the Court limine out the following witnesses identified above by the DIAZ DEFENDANTS, but for whom no contact information has been provided (L. Bankr. R. 7016-9(g):

- (a) Raul Sanchez
- (b) Alberto Szekely
- (c) Guillelmo Alejandro Rivera Gonzalez
- (d) Lorenzo Landeros
- (e) Felipe I. Vazquez Aldana Sauza

REMAINING ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial:

1. Whether KISMET, as successor in interest to the Trustec, is entitled to avoid the pre-petition purported transfers by the Debtors, MR. ICENHOWER AND MRS. ICENHOWER, of the Villa Real Property Trust to Defendant Howell & Gardner.
2. Whether KISMET may recover the Villa Property from Defendants MS. BARBA and MR. DIAZ under 11 U.S.C. § 550.
3. Whether a declaratory judgment should issue from the Court that:
 - a. The purported transfers constitute fraudulent conveyances, should be set aside and/or avoided by the Plaintiff and the Villa Real Property or beneficial interest in the Villa Real Property Trusts may be preserved and recovered pursuant to 11 U.S.C. § 550 and 551; and
 - b. Plaintiff is also entitled to avoid the purported transfers pursuant to 11 U.S.C. § 544, 548, California Civil Code Section 3439 et seq., California Common Law, and/or California Civil Code Section 3440, and recover from Defendants the Villa Real Property or the beneficial interests in the Villa Real Property Trust pursuant to 11 U.S.C. §550(a).
4. Whether the Preliminary Injunction issued by the Court against MR. DIAZ AND MS. BARBA in this Adversary Proceeding shall become permanent or be dissolved.

ADDITIONAL STIPULATIONS OF THE PARTIES

1. This case shall be tried along with the related adversary proceeding, No. 06-90369.

2. All discovery obtained by either party in this Adversary Proceeding may be used in the related Adv. Proc. No. 06-90369.

3. The Stipulation Regarding Disclosure of Confidential Information between and among MR. DIAZ, MS. BARBA, and the Chapter 7 Trustee entered November 10, 2005 [Docket Entry No. 102] is adopted by KISMET, as amended to the effect that Adv. Proc. No. 06-90369 shall also be deemed included with respect to all references made therein to this Adversary Proceeding.

4. Any English translation of a Spanish original document shall be properly authenticated as an exact and accurate translation of the Spanish original where it is duly certified as such under a written Certification and seal by an Expert Translator in the English and Spanish languages who is registered by a judicial district of Mexico. Notwithstanding the foregoing, the parties otherwise reserve all rights to dispute the authenticity of the underlying Spanish original document.

ADDITIONAL MATTERS REGARDING TRIAL PROCEDURES

1. KISMET contends that this proceeding is governed entirely by U.S. law, and thus does not propose to introduce or raise any issues about a foreign country's law, except to the extent that a rebuttal is necessary to issues of a foreign country's law by DIAZ DEFENDANTS, in respect to which KISMET reserves all rights.

2. KISMET has proposed that that KISMET'S claims against the following defendants shall be severed from this trial and adjudicated separately at a later date:

(a) Defendant Western Financial Assets, Inc. ("WESTERN"), a Nevada corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

(b) Defendant Buckeye International Funding, Inc. ("BUCKEYE"), a Nevada corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

(c) Defendant Johnstown Enterprises LLC ("JOHNSTOWN"), a Nevada limited liability corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

(d) Defendant Newark Enterprises, LLC ("NEWARK"), a Nevada limited liability corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

(e) Defendant Columbus Enterprises, LLC ("COLUMBUS"), a Nevada limited liability corporation, which has at times and for certain purposes used the following address: 5828 W. Sweet Drive, Visalia, California 93291.

(f) Defendant Craig Kelley ("KELLEY"), an individual domiciled in Los Angeles, California.

DIAZ DEFENDANTS have refused to so stipulate, and it will be necessary to address this matter at the Pre-Trial Conference.

3. KISMET advises the Court that additional discovery is still ongoing in this Adversary Proceeding, along with the related Adversary Proceeding, 06-90369. Furthermore, KISMET has not been given the opportunity to depose DIAZ DEFENDANTS' Expert Witness(es). Nor has the deposition of ALEX DIAZ been completed. As such, both Kismet and the DIAZ DEFENDANTS reserve all rights to amend and/or supplement (i) this Pre-trial Order, (ii) their respective Exhibit List, and (iii) their respective Witness List as may be necessary and/or appropriate.

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

* * *

This case shall not be tried by a jury.

The trial of this case shall not be bifurcated.

KISMET contends that the time estimated for trial is three to four days. The DIAZ

1 DEFENDANTS have advised KISMET that they estimate the time for trial is five days

2 Respectfully submitted,

3
4 Dated: April 10, 2008

BAKER & MCKENZIE LLP

5
6 By: /s/ Ali M.M. Mojdehi

Ali M.M. Mojdehi

Janet D. Gertz

7
8 Attorneys for Plaintiff
Kismet Acquisition, LLC, a Delaware
9 limited liability company

10 Dated: April 10, 2008

MORRIS & ASSOCIATES

11
12 By: Stephen Morris

Steve Morris

13 Attorneys for Defendants
14 Mr. Alex Diaz and Martha Barba

EXHIBIT “A”

FILED
03 NOV 24 AM 10:13
SOUTHERN DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN P. LONIE, DIANE C. ONEY
AND THOMAS E. LONIE, JR. FAMILY
TRUST,

Plaintiff,

v.

JERRY LEE ICENHOWER, et al,

Defendants.

Civil No. 00-CV-612-L(LSP)

MEMORANDUM OF DECISION and
ORDER RE: DAMAGES; and
DIRECTING ENTRY OF
JUDGMENT

By Memorandum of Decision and Order filed September 25, 2003, the Court found in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim. The issue of damages remained pending; therefore, plaintiffs were ordered to provide the Court and opposing counsel with their verified calculation of any and all damages sustained in conformity with the Court's Memorandum of Decision and Order. Defendants were given an opportunity to file a response, consistent with the Memorandum of Decision and Order, to plaintiffs' calculation of damages. Plaintiffs filed a reply memorandum. The matter of damages having been fully briefed and finding this matter suitable for determination on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1), the Court enters the following Order.

...

00cv612

102 EXHIBIT "D"

Discussion

1. Money Damages

Plaintiffs submitted their verified statement of damages on October 14, 2003 to which defendants filed a statement of non-opposition to plaintiffs' damages calculations.¹

In its Memorandum of Decision and Order, the Court found the English Note to be the operative Note. The Note required defendants to pay plaintiffs the principal sum of \$550,000.00 plus advances of \$192,199.23. Both principal and advances were to bear interest at a rate of 10% per annum. The effective date of the Note was April 1, 1995. Calculated through October 31, 2003, the damages due and owing to plaintiffs are as follows:

Principal	\$ 550,000.00
Interest on Principal	472,083.33
Advances	192,199.23
Interest on Advances	<u>142,547.76</u>
Total Due	\$1,356,830.32

2. Prevailing Party

The Court finds and concludes that plaintiffs are the prevailing parties in this action. Plaintiffs may seek an award of costs under Local Civil Rule 54.1.

3. Re-registration of Lien

As noted above, defendants do not challenge the mathematical calculation of damages presented by plaintiffs. But defendants assert that plaintiffs are not entitled to "other relief" in the form of reconveyance of the title to the Villa property to plaintiffs and/or the re-registration of the prior lien on the Villa. Plaintiffs contend that re-registration of the lien is appropriate relief and such relief was generally requested in their Complaint. The Court concurs.

The English Note contained terms requiring a first priority lien to be registered in Mexico. At trial, Icenhower testified that the lien had been registered but was released

¹ Defendants reserve their contentions as to "whether or not such interest was due under the terms of the agreements in issue, and [] all of their claims and contentions with respect to the merits of the action pending a determination of whether or not an appeal will be filed." Defendants' Opposition at 2.

1 pursuant to the April 1, 1996 Agreement with Lonie. Lonie agreed to release the lien on the
2 Villa Property for the purpose of effectuating a proposed sale of property to the World
3 Interactive Network ("WIN"). The February 9, 1996 proposal from Icenhower to Lonie also
4 indicated that the lien would be reinstated if the sale fell through. The sale was not
5 consummated. Based on the evidence presented at trial, the Court found that Lonie did not
6 cancel the requirement to re-register the Note obligation based on an alleged oral agreement
7 with Icenhower. The Court specifically found that the failure to re-register the lien constituted
8 a breach of the Agreement on Note contract requiring the lien to be re-registered if the sale was
9 not completed. The Court further found that between Lonie and Icenhower, the lien was
10 effective and constituted a security interest in Icenhower's rights, title or interest in the Villa
11 and Icenhower breached the agreement to re-register the lien when the WIN transaction failed
12 to go forward. The Court now finds that plaintiffs sought all legally available relief in their
13 Complaint, including the re-registration of the lien. Requiring defendants to re-register the lien
14 will function to secure the damages owed to plaintiffs and is an available and appropriate
15 remedy for plaintiffs.

16 The lien on the Villa property was intended to secure the amount due and owing to
17 plaintiffs. Because the Court has found and concluded that defendants were required under the
18 agreement to re-register the lien in the event the property was not sold, defendants will be
19 required to re-register the first priority lien in Mexico in accordance with the Agreement
20 on Note and the Court's Memorandum of Decision and Order until full payment of the
21 damages the Court has awarded plaintiffs is paid in full. Upon defendants' full payment of
22 damages to plaintiffs, the lien shall be released.

23 Conclusion

24 Based on the foregoing, **IT IS ORDERED** awarding plaintiffs damages in the amount
25 of \$550,000.00 in principal; 10% per annum interest on the principal from April 1, 1995;

26 ...

27 ...

28 ...

1 \$192,199.23 in advances; 10% per annum interest on the advances from April 1, 1995.²

2 IT IS FURTHER ORDERED that defendants shall re-register the lien on the Villa
3 property within ten (10) days of the filing of this Order. Defendants shall submit evidence of
4 the re-registration of the lien to plaintiffs within ten (10) days of the registration of the lien.
5 Upon full payment of the damages in this matter, plaintiffs shall cause the lien to be released.

6 IT IS FURTHER ORDERED that full payment of the damages awarded shall be
7 made within 60 days of the filing of this Order.

8 IT IS FURTHER ORDERED that in the event defendants fail to pay to plaintiffs the
9 full damages award within the time provided, defendants shall reconvey the Villa property,
10 free of any encumbrance, claim, lien or liability that has been placed upon the property or
11 occasioned by defendants' actions or inactions, to plaintiffs in accordance with the terms of the
12 parties' underlying agreement.

13 IT IS FURTHER ORDERED directing entry of judgment in plaintiffs' favor and
14 against defendants; and in counterdefendants' favor and against counterclaimants on the
15 counterclaim, and awarding damages to plaintiffs in accordance with this Order.

16 IT IS SO ORDERED.

17
18 Dated: 11/21/03


M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

19
20
21 COPY TO:

22 HON. LOUISA S. PORTER
UNITED STATES MAGISTRATE JUDGE

23 ALL COUNSEL
24
25
26

27 ² Plaintiffs have calculated the accrued interest through October 31, 2003 in the following
28 amounts: \$472,083.33 - interest on principal and \$142,547.76 - interest on advances. Plaintiffs are
entitled to accrued interest until payment is made in full for principal and advances.

ALL-STATE™ LEGAL 800-227-5510 FRIEN RECYCLED



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

Case Number: 3:00-cv-00612

Lonie - PLAINTIFF

v.

Icenhower -

DEFENDANT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

FILED
NOV 25 2003

JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Clerks Judgment: It is ordered and adjudged that plaintiffs are awarded damages in the amount of \$550,000.00 in principal; 10 percent per annum interest on the principal from 4/1/95; \$192,199.23 in advances; 10 percent per annum interest on the advances from 4/1/95. It is further ordered directing entry of judgment in plaintiffs' favor and against defendants; and in counterdefendants' favor and against counterclaimants on the counterclaim, and awarding damages to plaintiffs in accordance with the 11/24/03 Order.....

11/25/03

Date

[Signature] W. Samuel Hamrick, Jr.

Clerk

[Signature]
by R. Chambers, Deputy Clerk

Entered on 11/25/03

pre - Lorenz
ref - Porter

103
EXHIBIT "E"

EXHIBIT “B”

CSD 3026 (01/01/02)

Name, Address, Telephone No. & I.D. No.

Ali M.M.Mojdehi State Bar No. 123846

Janet D. Gertz, State Bar No. 231172

BAKER & MCKENZIE LLP

12544 High Bluff Drive, Third Floor

San Diego, California 92130-3051

Telephone: +1 858 523 6200

Attorneys for Plaintiff, KISMET ACQUISITION, LLC

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

JERRY LEE ICENHOWER dba Seaview Properties, and DONNA
LEE ICENHOWER,

Debtors.

BANKRUPTCY NO. 03-11155-LA-7

KISMET ACQUISITION, LLC

Plaintiff(s)

ADVERSARY NOS. 04-90392 and 06-90369

v.

JERRY L. ICENHOWER dba Seaview Properties, and DONNA
L. ICENHOWER fka DONNA L. HAWKS, et al.

Defendants(s)

LIST OF EXHIBITS SUBMITTED BY:

BAKER & MCKENZIE, LLP, Attorney for ☒ Plaintiff(s) ☒ Defendant(s) ☐ Other: KISMET ACQUISITION, LLC.

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
1				10/07/03 Promissory Note for \$100,000 loan from Alex Diaz to Jerry Icenhower (DIAZ 87)
2				06/07/04 [Spanish] Purchase Agreement between Howell & Gardner Investors, Inc. and Alejandro Diaz Barba (DIAZ 10-14)
3				06/07/04 [Translation] Purchase Agreement between Howell & Gardner Investors, Inc. and Alejandro Diaz Barba
4				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567)
5				04/15/02 Resolution of Board of Directors of Howell & Gardner Investors, Inc. authorizing Craig Kelly to proceed on behalf of the Company (D0000169)
6				07/08/05 Letter from Maltes Farnaes at Ross, Dixon & Bell, LLP to Michael E. Busch re Davis, Trustee v. Icenhower, cc: Gerald Davis, Trustee, William Conti, and Robert Rentto
7				06/16/04 Debit Memo on UBS Account of Alejandro Diaz for \$398,663 (DIAZ 15)
8				06/16/04 Debit Memo on UBS Account of Alejandro Diaz for \$191,567 (DIAZ 16)
9				06/07/04 [Spanish] Letter of Instruction to Banco National de Mexico, S.A. Trustee Department from Howell & Gardner re formalization of instructions in favor of Alejandro Diaz Barba re Vista Hermosa
10				06/07/04 [Translation] Letter of Instruction to Banco National de Mexico, S.A. Trustee Department from Howell & Gardner re formalization of instructions in favor of Alejandro Diaz Barba re Vista Hermosa
11				06/10/04 Currency Conversion Sheet
12				08/05/04 [Translated by Rebeca Camarena Marroquin] Document Execution by Martha Margarita Barba de la Torre and Alejandro Diaz Barba of "Agreement of Transmission of Property in Total Execution of a Trust" (DIAZ 17 – DIAZ 41)
13				Declaration of Alejandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction
14				04/00/13 Chapter 7 Trustee's Application to Employ Bruce D. Greenberg, Inc. to Conduct an Appraisal of Mexican Real Property; Declaration

2

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				of Bruce D. Greenberg in Support of Application, with exhibits: Ex. 1: 03/10/05 Letter from Greenberg to Busch re Valuation; Services; Ex. 2: Qualifications of Greenberg; Ex. 3: CV of Gregory Lance Yaste; Ex. 4: Qualifications of Michael P. McCalley; Ex. 5: Qualifications of Byron Bridges
15				08/30/05 Notice of Intended Action and Opportunity for Hearing seeking supplemental order to retain Greenberg
16				Defendant Western Financial Assets, Inc.'s Initial Written Disclosures Pursuant to Federal Rules of Bankruptcy Procedure Rule 7026(a) and FRCP 26 (attaches corporate formation documents, 000001 – 45)
17				04/14/04 Articles of Incorporation of Western Financial Assets
18				05/08/04 [Spanish] Document re \$800,000 loan from sale of Vista Hermosa Property , with \$80,000 commission to Jerry Icenhower
19				05/08/04 [Translation] Document re \$800,000 loan from sale of Vista Hermosa Property , with \$80,000 commission to Jerry Icenhower (000217 – 225)
20				Timeline/Chart
21				Defendant Buckeye International Funding, Inc.'s Initial Written Disclosures Pursuant to Federal rules of Bankruptcy Procedure Rules 7026(a) and FRCP 26 (attaches corporate formation documents) (000046 – 98)
22				04/14/04 Articles of Incorporation for Western Financial Assets, Inc.
23				04/14/04 Sales Receipt from Eastbiz.com, Inc. for \$900.00 to Hobert B. Icenhower for services to Western Financial Assets, Inc.
24				04/15/04 Sales Receipt from Eastbiz.com, Inc. for \$188.00 to Hobert G. Icenhower for services on behalf of Western Financial Assets, Inc.
25				06/30/04 Contract for Nominee Services between Inc. Management, Inc. and Newark Enterprises, LLC, represented by Hobert Icenhower
26				06/30/04 Contract for Nominee EIN for Newark Enterprises, LLC
27				06/30/04 Articles of Organization Limited-Liability Company for Newark Enterprises in Nevada
28				04/27/04 Contract for Nominee Services between Eastbiz.com, Inc. and Johnstown Enterprises,

3

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUNDS FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				LLC, represented by Hobert Icenhower; Contract for Nominee EIN (page 3)
29				04/27/04 Articles of Organization Limited-Liability for Johnstown Enterprises, LLC
30				04/27/04 Sales Receipt from Eastbiz.com, Inc. to Hobert Icenhower, Johnstown Enterprises, LLC for \$993.00
31				04/28/04 Johnstown Enterprises, LLC Mandate and Resolutions opening account at Visalia Community Bank and authorizing bank to honor instructions of Hobert G. Icenhower
32				Contacts Address information for Bill Conti (CK 00246)
33				02/16/06 Answer of Defendant Craig Kelley to Second Amended Complaint for Avoidance, Recovery and Preservation of Fraudulent Conveyance
34				12/11/01 Articles of Incorporation of Howell & Gardner Investors, Inc. (CK 00011 – 18)
35				03/04/02 Save and Hold Harmless Indemnity Agreement Receipt and Transfer and Assignment from Laughlin International, Inc. to Howell & Gardner Investors, Inc. (CK 00019)
36				03/04/02 Minutes of First Meeting of Board of Directors of Howell & Gardner Investors, Inc. (CK 00020 – 22)
37				03/04/02 Acceptance of Appointment as Officer (CK 00030)
38				03/04/02 Consent to Action Without a Meeting of the Directors of Howell & Gardner Investors, Inc. (CK 00027)
39				03/04/02 Acceptance of Appointment as Director (CK 00029)
40				By-Laws of Howell & Gardner Investors, Inc. (CK 00031 – 39)
41				08/14/04 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. (CK 00080)
42				08/15/04 Resignation of Director and Officer (Craig Kelley) (CK 00081)
43				12/26/02 Annual List of Officers, Directors and Resident Agent of Howell & Gardner Investors, Inc. (CK 00023)
44				12/11/02 Minutes of Annual Meeting of Stockholders of Howell & Gardner (CK 00054)
45				12/11/03 Minutes of Annual Meeting of Stockholders of Howell & Gardner Investors, Inc.

4

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				(CK 00059)
46				12/18/03 Application for Business License for Howell & Gardner Investors, Inc. (CK 00060)
47				Certificate of Resignation of Resident Agent (Laughlin Associates, Inc.)
48				12/11/01 Resolution, Written Consent of Original Directors(s)/Officers(s) of Howell & Gardner Investors, Inc. (offer the corporation for sale) (CK 00025 – 26)
49				03/04/02 Register of Original Stock Certificate Issue (CK 00070)
50				Share Certificates issued by Howell & Gardner Investors, Inc. (CK 00071 – 79)
51				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate acquisition of Vista Hermosa) (CK 00042)
52				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate purchase rural lot in Chamela, Jalisco) (CK 00043)
53				03/04/02 Offer from Howell & Gardner to purchase beneficial trust rights of Jerry and Donna Icenhower (CK 00040)
54				03/04/02 Resolution of the Board of Directors of Howell and Gardner Investors, Inc. (CK 00044 – 45)
55				03/12/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (CK 00046 – 47)
56				Expense Register re Villa Vista Hermosa
57				03/12/02 Amendment to Contract dated 03/04/02 (CK 00048)
58				04/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (CK 00049)
59				04/01/02 Agreement to assume loan from Hobert G. Icenhower to Jerry L. Icenhower (CK 00050)
60				04/15/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re power of attorney to Peter R. J. Thompson under Mexican law to sign on behalf of the company re beneficial rights in Vista Hermosa (CK 00051)
61				05/03/02 Apostille re attached Powers of Attorney
62				2002 Escritura [Spanish] (CK 00123 – 154)
63				04/01/03 Howell & Gardner agreement to pay

5

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				\$10,000 to Hobert G. Icenhower for extension of loan on Villa Vista Hermosa (CK 00168)
64				04/01/04 Howell & Gardner agreement to pay \$5,000 to Hobert G. Icenhower for extension of loan on Villa Vista Hermosa (CK 00173)
65				Fourth Notice of Taking Further Deposition of Craig Kelley
66				Declaration of Craig Maurice Kelley
67				Settlement Agreement and Mutual Release
68				Timeline from November 1993 through December 20, 2005; diagram re Promissory Note for Cash and Assignments; diagram re Contract between H&G and Ramiro Lomeli Salcedo and Assignment
69				2002 Form 1040 U.S. Individual Income Tax Return for Jerry Lee Icenhower and Donna Lee Icenhower
70				2003 Form 8453 U.S. Individual Income Tax Declaration for an e-file Return; 1040 Tax Return and Schedules, California Resident Income Tax Return for Jerry Lee Icenhower and Donna Lee Icenhower
71				2004 1040 U.S. Individual Income Tax Return and Schedules for Jerry Lee Icenhower and Donna Lee Hawks-Icenhower
72				Chart re Monthly Income (all sources except \$100,000 loan), faxed 02/07/04
73				08/04/97 Letter from William L. Conti to Ernest J. Maupin, Esq. re Jerry Icenhower La Mision, et al. re "dealings with Mr. D. Donald Lonie, Jr. and the D. Donald Lonie Jr. Family Trust"
74				02/24/98 Letter from William L. Conti to Ernest J. Maupin, Esq. re Jerry Icenhower La Mision, et al.
75				11/24/03 Memorandum of Decision and Order re Damages; and Directing Entry of Judgment in <i>Stephen P. Lonie, Diane C. Oney and Thomas E. Lonie, Jr. Family Trust v. Jerry Lee Icenhower, et al. ("Lonie v. Icenhower")</i>
76				10/31/03 Defendant and Cross-Complainants' Statement in Opposition to Plaintiff's Verified Statement of Damages in <i>Lonie v. Icenhower</i>
77				Notice of Motion and Motion by Plaintiffs for Preliminary Injunction dated March 11, 2002 in <i>Lonie v. Icenhower</i> (Hearing scheduled for 5/13/02)
78				08/31/04 Declaration of Jerry L. Icenhower in Opposition to OSC re Preliminary Injunction

6

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |
- SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				(Hearing dated 09/02/04), Ex. A: 03/30/95 Real Estate Purchase Contract; Ex. 2: Document prepared by Mexican Notary, Narciso P. Lomeli Enriquez re value on Villa property; Ex. 3: Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction in <i>Lonie v. Icenhower</i> ; Ex. 4: Reply to Opposition to Plaintiffs' Verified Statement of Damage in <i>Lonie v. Icenhower</i> ; Ex. 5: Email from Diane Lonie Oney to "Mr. Miller" re Villa Vista Hermosa/El Zafiro; Ex. 6: 03/04/02 Offer from Howell & Gardener Investors, Inc. to acquire beneficial trust rights of Jerry and Donna Icenhower, Amendment to Contract dated 03/04/02, Agreement to assume loan; Ex. 7: Release of Icenhower's interest in El Zafiro and transfer to Robert Miller, trustee; Ex. 8: Document transferring Icenhower's interest in the Villa to Howell & Gardner Investments, Inc.
79				01/06/06 (Profit) Annual List of Officers, Directors and Resident Agent of Western Financial Assets, Inc. (000041)
80				01/06/04 Notice and Order from the City of Buchanan, Building Inspection Department to Howell & Gardner Investors, Inc., with attachments (000129 – 211)
81				02/11/04 Declaration of Jerry Icenhower
82				"Total Sheet" (DIAZ 507, 508)
83				05/05/06 Deposition of Jerry Lee Icenhower (PMK)
84				06/29/07 Declaration of Alejandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction in <i>Kismet Acquisition, LLC Successor in Interest to Gerald H. Davis, Chapter 7 Trustee v. Jerry Icenhower dba Seaview Properties, and Donna L. Icenhower fka Donna L. Hawks, et al. ("Kismet v. Icenhower")</i>
85				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567)
86				03/04/02 Register of Original Stock Certificate Issue (CK 00070)
87				12/10/04 [Translation] Letter from Alexandro Toulet L. to Hector Barraza, Stewart Title Guaranty de Mexico S.A. de C.V. re Title search for real property known as Villa Vista Hermosa,

7

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				located in Chamela, Municipality of La Huerta Jalisco, Mexico
88				06/07/04 [Spanish] Letter of Instruction (DIAZ 6 - 9)
89				06/07/04 [Spanish] Contract (DIAZ 10 – 13)
90				08/24/06 Email from Alexandro Diaz to Mishka re another perspective on Impulsora (DIAZ 275, 276)
91				02/18/07 [Spanish] Email from Alejandro Diaz to Alejandro, cc: Nicolas, Mishka, Eugene Kocherga, re: Synopsis – Impulsora de Chamela (NK 00034, 35)
92				11/01/05 Letter from Nancy Furse Alder to Michael E. Busch re: <i>In re Icenhower</i> and communication of offer in connection with Vista Villa and El Zafiro (DIAZ 88)
93				08/04/06 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Chamela (DIAZ 256, 257)
94				09/06/06 [Spanish] Email from Alejandro Diaz to Mishka, Eugene, and Jenka re: Draft letter to WOLFIE . . . comments???? (DIAZ 260, 261)
95				03/26/07 Email stream from Wolfgang Hahn to Nancy Alder forwarding upcoming meeting
96				03/26/07 Email stream from Wolfgang Hahn to Nancy Alder forwarding upcoming meeting
97				04/30/07 Email stream from Wolfgang Hahn to Nancy Alder, Gabriel Gallo forwarding Impulsora de Chamela
98				05/02/07 [Spanish with Translation] Email from Alejandro Diaz to Wolfgang Hahn re: Demandas Frivolas
99				12/10/04 [Translation] Letter from Alexandro Toulet L. to Hector Barraza, Stewart Title Guaranty de Mexico S.A. de C.V. re Title search for real property known as Villa Vista Hermosa, located in Chamela, Municipality of La Huerta Jalisco, Mexico
100				09/06/06 Email from Alejandro Diaz to Eugene Kocherga re forwarding Draft letter to WOLFIE . . . comments????
101				01/18/07 [Spanish, with Translation] Email from Alejandro Diaz to Eugene Kocherga re forwarding Impulsora de Chamela Fraud Administration Demand (EK 00045 – 46)
102				04/23/07 [Spanish] Email string from Alejandro Diaz to Nicolas, Mishka, Jenka Kocherga and

8

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Eugene Kocherga re forwarding Rozes con el administrador en el fraccionamiento de Vista Hermosa (MK 00040 – 42)
103				02/18/07 [Spanish] Email from Alejandro Diaz to Alejandro Diaz, cc: Nicolas, Mishka, and Eugene Kocherga re SYNOPSIS – Impulsora de Chamlea (sic) (MK 00028, 29)
104				02/18/07 [Translation] Email from Alejandro Diaz to Alejandro Diaz
105				04/09/07 Email from Alejandro Diaz to Nicolas, Eugene Kocherga, Mishka, and Alejandro Diaz (MK 00019, 20)
106				02/17/04 [Spanish] Valuation (DIAZ 1, 2)
107				06/07/04 [Spanish] Letter of Instructions (DIAZ 6 – 9)
108				06/07/04 [Spanish] Purchase Contract
109				07/31/06 Email from Alejandro Diaz to Eugene Kocherga, Jenka, and Eugene Kocherga forwarding Davis v. Icenhower (offer made by Hahn for El Zafiro and villa) (DIAZ 312)
110				08/04/06 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Chamela (DIAZ 256, 257)
111				09/06/06 [Spanish] Email from Alejandro Diaz to Mishka, Eugene Kocherga, and Jenka re Draft letter to WOLFIE . . . comments ???? (DIAZ 260, 261)
112				06/28/06 Email from Alejandro Diaz to Nicolas re Our friend Wolfie's name (DIAZ 332)
113				E.Digital Corporation website listing names of corporate officers
114				01/30/07 SEC Registration Statement for E.Digital Corporation (S-1) Management
115				03/17/03 Exhibit 4.44 to 10K of E.Digital Corporation re loan from Alex Diaz
116				02/16/06 Federal Tax Lien recorded with the San Diego Recorder' Office
117				FAA Registry reflecting pilot certificates for Porfirio Alejandro Diaz
118				Property Profile for Eames Street property
119				Property Profile for Allen School Road address
120				02/17/05 Declaration of Michael E. Busch in Support of: (1) Second Emergency Ex Parte Application of Trustee to File Documents Under Seal; (2) Issuance of Temporary Restraining

9

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Order and OSC re Preliminary Injunction Hearing Preventing Defendants from Taking Any Action Regarding the Transfer of, Encumbering, or Otherwise Affecting the Title to, or Taking Any Action to Materially Affect the Condition of Certain Real Property and Personal Property; and (3) Application to File Amended Complaint
121				12/15/03 Bankruptcy Petition for Jerry L. and Donna L. Icenhower
122				12/16/03 Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines
123				09/07/04 Order Fixing Date to File Proofs of Claim and Notice Thereof
124				09/05/06 Reply to Opposition re Motion for Hearing on Enforceability of Settlement
125				06/10/04 Hobart Straight Note No. 1 for \$675,000
126				06/18/04 Hobart Straight Note No. 2 for \$398,000
127				04/12/07 Alex Diaz' and Martha Diaz' Answer to First Amended Complaint
128				02/06/04 Amendment to Selected Bankruptcy Schedules
129				11/28/06 Declaration of Alex Diaz in Support of Motion to Dismiss
130				06/29/07 Declaration of Alexandro Diaz-Barba in Support of Motion to Dissolve Preliminary Injunction
131				05/03/02 [Spanish] Power of Attorney (D0000115 – 122)
132				05/02/07 [Spanish] Email from Alejandro Diaz to Wolfgang Hahn re Demandas Frivolos
133				05/02/07 [Translation] Email from Alejandro Diaz to Wolfgang Hahn re Frivolous Suits
134				08/20/07 Subpoena in an Adversary Proceeding for deposition of Wolfgang Hahn
135				06/07/04 [Translation] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba (DIAZ 10 – 14)
136				06/07/04 [Spanish] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba (CK 00083 – 87, DIAZ 10 – 14)
137				06/07/04 [Translation] Purchase Agreement Howell & Gardner Investors, Inc. and Alejandro Diaz-Barba, (DIAZ 10 – 14)
138				06/07/04 [Translation] Letter to Rafael Nunez from Craig Kelley (DIAZ 9)

10

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
139				06/08/04 Apostille for [Spanish] Letter of Instruction (DIAZ 6 – 9)
140				06/08/04 Apostille for [Spanish] Letter to Instruction (D0000153 – 157)
141				06/08/04 Apostille for [Spanish] 06/16/04 Letter of Instruction (CK 00180 – 183)
142				06/16/04 [Translation] of Letter of Instruction
143				06/07/04 Resolution of the Directions of Howell & Gardner Investors, Inc. authorizing and directing Craig Maurice Kelley to sign the attached letter of instructions to Banco Nacional de Mexico, S.A. (D000055 – 58)
144				05/07/04 [Spanish] Statement of Value (D000059-62)
145				03/04/02 Offer to Purchase (CK 00040)
146				[Spanish] Documents from Mexican File (DIAZ 537 – 798)
147				Laughlin & Associates website
148				Documents re 4651 Villas Drive, Bonita, CA 91902-2451 (Mapquest, Property Transfer Record, San Diego County Treasurer Secured Property Tax Details, Property Tax Search)
149				Documents re Califormula
150				Documents re Background Report on Alejandro Diaz
151				08/25/06 Declaration of Ernest J. Maupin in Support of Position Statement on Settlement by Plaintiff and Creditor Kismet Acquisition LLC Successor in Interest to All Right Title and Interest in and to the Rights of the D. Donald Lonie, Jr. Family Trust, and Creditor Kismet Acquisition II, LLC
152				04/12/07 Counterclaim by Alex Diaz and Martha Diaz Against Kismet Acquisition, LLC and Third-Party Complaint Against Kismet Acquisition II, LLC, Axolotl S.A., Wolfgang Hahn, and Dieter Hahn
153				12/28/06 Third Tolling Agreement Between Kismet Acquisition, LLC and Suzanne Icenhower (KISMET 1389 – 1400)
154				08/17/07 Settlement Agreement and Mutual Release by and between Kismet Acquisition, LLC and Craig Maurice Kelley
155				03/04/02 Register of Original Stock Certificate

11

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Issue (KISMET 1003 – 1012)
156				10/31/06 Purchase and Assignment Agreement between Gerald H. Davis and Kismet Acquisition II, LLC; (KISMET 1479 – 90); 07/13/06 Certificate of Formation of Kismet Acquisition II, LLC (KISMET 1493 – 1499); Certificate of Formation of Kismet Acquisition; Operating Agreement of Kismet Acquisition II (KISMET 1495 – 1497) 06/21/06 Operating Agreement of Kismet Acquisition, LLC (KISMET 0007 – 13);
157				07/30/04 Letter from Ari Nieto Velez to "Jerry"; 11/03/04 Letter from Ari Nieto Velez to "Jerry"; 10/20/03 Letter from Jerry Icenhower to Ari Nieto re Chamela
158				05/11/02 [Spanish] 2002 Valuation (CK 00089)
159				04/01/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00062, 63)
160				04/01/03 Resolution of the Board of Directors of Howell & Gardner Investors re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00057, 58)
161				04/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to assume the loan with Hobert G. Icenhower, attaches loan assumption (CK 00049, 50)
162				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to pay off loan due Hobert G. Icenhower (CK 00069)
163				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re role of Jerry Icenhower (CK 00044, 45)
164				03/05/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re agreement with Jerry Icenhower handling of rentals on Vista Hermosa (CK 00171)
165				04/18/05 Diaz Defendants' Initial Disclosures Pursuant to Fed. R. Bankr. P. 7026(a)
166				05/15/04 [Spanish with Translation] Inspection (DIAZ 3 -5)
167				02/17/04 [Spanish with Translation] Valuation prepared by Fernando Rivera Martinez (DIAZ 1, 2)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |
- SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
168				2002 Escritura [Spanish] (CK 00090 – 117)
169				2004 Escritura [Spanish] (D00003 – 12)
170				[Translation] 2004 Escritura (DIAZ 18 – 41)
171				[Spanish] Mexican Identification for Rafael Nunez (D0000249)
172				06/07/04 [Spanish] General Power of Attorney (D0000159 – 164)
173				05/10/04 [Spanish] Certificate re Taxable Value (D0000219)
174				09/13/04 [Spanish] Recording Receipt (D000014)
175				02/23/05 Opposition of Defendants Alejandro Diaz Barba and Martha B. Diaz' to Order to Show Cause Regarding Preliminary Injunction
176				Website re Villa "10" in Puerto Vallarta, Mexico
177				08/12/04 [Spanish] Check to Felipe Ignacio Vazquez Aldana Sauza (D0000307)
178				08/12/04 [Spanish] Taxable Value 1 (D00001, 2)
179				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. (Kelley to consummate acquisition of Vista Hermosa) (D0000173)
180				Account Information for Buckeye International Funding, Inc. (\$675,000), Western Financial Assets (\$398,663), and Icenhower Investments (\$191,567) (CK 00088)"
181				08/31/04 [Spanish] Expenses for Villa Vista Hermosa, Elva Cortez Garcia (DIAZ 450)
182				08/05/04 [Spanish] Check Deposit slips(DIAZ 518)
183				[Spanish] Handwritten Expense Calculation (DIAZ 477)
184				[Spanish] Handwritten Villa Vista Hermosa Expenses (DIAZ 478, 484, 499, 483, 505-508,)
185				[Spanish] Kocherga Breakdown (DIAZ 468)
186				[Spanish] Ari Nieto Payment (DIAZ 491)
187				12/31/03 Banamex Statement for Jerry Icenhower
188				07/08/05 Letter from Maltes Farnaes to Michael E. Busch re production of documents
189				08/15/06 Email from Alejandro Diaz to Eugene Kocherga re Letter to Wolfgang – Fw: Chamela

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection; Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
190				02/18/07 [Translation] Email from Alejandro Diaz to Alejandro, cc: Nicolas, Mishka, Eugene Kocherga, re: Synopsis – Impulsora de Chamela (NK 00034, 35)
191				04/21/07 Email from Alejandro Diaz to Nicolas, Mishka, Eugene Kocherga, and Sacha Kocherga re Appraisal of 350 Hectareas of Impulsora de Chamela - Let's get our due !!!! (NK 00044, 45)
192				Documents re Villa Vista Hermosa expenses (DIAZ 452 – 467, 469 – 476, 479 – 482, 485 – 498, 500 – 504, 509 – 517, 519 – 523)
193				12/11/01 Corporate Charter for Howell & Gardner (2 copies) (CK 00009, 10)
194				03/04/02 Resignation member of Board of Directors and Officer of Howell & Gardner (Brent Buscay) (CK 00028)
195				03/04/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing issuance of capital stock (CK 00041)
196				05/01/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate purchase of Villa Vista Hermosa, Chamela, Jalisco, Mexico (CK 00052)
197				12/11/02 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Craig Kelley Director of Howell & Gardner Investors, Inc. for one year (CK 00053)
198				03/04/02 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. Craig Kelley appoints Craig Kelley sole Director of Howell & Gardner Investors, Inc. (CK 00055)
199				12/11/03 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Craig Kelley Director of Howell & Gardner for one year (CK 00056)
200				03/05/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing the President of the Corporation to enter into agreement with Jerry Icenhower for handling rentals on Vista Hermosa (CK 00061)
201				05/07/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing President to enter contract for sale of property at 1207 Redbud Trail, Buchanan, Michigan (CK 00064)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
202				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate sale of beneficial rights in Vista Hermosa held under escritura 11,778 (CK 00065)
203				05/10/04 Certificate of Good Standing for Howell & Gardner Investors, Inc. (CK 00066 -- 68)
204				06/16/04 [Spanish] Letter of Instruction (CK 00082)
205				09/10/02 [Spanish] Direccion del Registro Publico de la Propiedad re Escritura 11,778 (CK 00118-120)
206				03/08/02 Trustee's Deed between Robert P. Miller D.D.S. Profit Sharing Plan and Trust, Robert P. Miller, D.D.S. and Howell & Gardner Investors, Inc. (CK 00121, 122)
207				09/10/02 [Spanish] Direccion del Registro Publico de la Propiedad re Escritura 11,778 (CK --152-155)
208				03/12/02 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing President to enter into contract to purchase 1207 Redbud Trail (CK 00156)
209				03/08/02 Trustee's Deed between Robert P. Miller D.D.S. Profit Sharing Plan and Trust, Robert P. Miller, D.D.S. and Howell & Gardner Investors, Inc. (CK 00157, 158)
210				12/11/03 Minutes of Annual Meeting of Stockholder of Howell & Gardner Investors, Inc. (CK 00169)
211				12/18/03 Application for Business License for Howell & Gardner Investors, Inc. (CK 00170)
212				04/01/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re authority to Craig Kelley to extend the loan with Hobert G. Icenhower, attaches extension (CK 00172, 173)
213				05/07/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. re contract for sale of 1207 Redbud Trail (CK 00174)
214				05/10/04 Resolution of the Board of Directors of Howell & Gardner Investors, Inc. authorizing and instructing Craig Kelley to consummate sale of beneficial rights in Vista Hermosa held under escritura 11,778 (CK 00175)
215				08/14/04 Consent to Action with a Meeting of the Directors of Howell & Gardner Investors, Inc. appointing Raul Sanchez Navarro Director of

15

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GROUND(S) FOR OBJECTION

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| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				Howell & Gardner Investors, Inc. (CK 00184)
216				03/04/02 Waiver of Notice of First Meeting of Board of Directors of Howell & Gardner Investors, Inc. (CK 00202)
217				06/07/04 [Spanish] Contrato de Compraventa (CK 00235-239)
218				12/14/06 Letter from Francisco Salguero , Appraiser, to Alejandro Diaz re "opinion of value estimating the value" of Villa Vista Hermosa (DIAZ 838 – 841))
219				01/15/08 [Spanish] Letter from attorneys Sanchez Acosta, S.C. , Abogados to Alejandro Diaz Barba enclosing selected documents (DIAZ 842 – 845)
220				08/05/04 [Spanish] Anexo "A" Certified copy of Escritura (DIAZ 846 – 881)
221				05/10/04 Anexo (1) Certificate of Good Standing for Howell & Gardner Investors, Inc.; attaching same translated into Spanish (DIAZ 882 – 883)
222				05/10/04 Anexo (2) Apostille attaching Articles of Incorporation for Howell & Gardner Investors, Inc. attaching Spanish translation of same (DIAZ 884 – 901)
223				06/08/04 Anexo (3) Apostille attaching [Spanish] Power of Attorney (DIAZ 902 – 911)
224				05/07/04 [Spanish] Anexo (4) Statement of Value (DIAZ 912)
225				05/07/04 [Spanish] Anexo (5) Recording Receipt (DIAZ 913)
226				[Spanish] Anexo (6) Marriage Certificate (DIAZ 914)
227				08/05/04 [Spanish] Anexo (7) Escritura (DIAZ 915 – 918)
228				06/08/04 [Spanish] Anexo (8) Contrato Privado de Compraventa for Howell & Gardner Investors, Inc. (DIAZ 919 – 923)
229				06/29/04 Anexo (9) Apostille attaching [Spanish] Letter of Instruction (DIAZ 924 – 930)
230				07/28/04 Anexo (10) Apostille attaching 06/07/04 Resolution of the Directors of Howell & Gardner Investors, Inc. authorizing and directing Craig Maurice Kelley to sign Letter of Instruction, includes Translation of Resolution (DIAZ 931 – 934)
231				08/02/04 [Spanish] Anexo (11) Letter of Instruction (DIAZ 935 – 937)

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GROUND(S) FOR OBJECTION

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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
232				08/02/04 [Spanish] Anexo (12) Letter from Banamex to Rafael Nunez Martinez and Jose Guadalupe Nande Rodriguez (DIAZ 938)
233				08/13/04 [Spanish] Anexo (13) Receipt from Banamex (DIAZ 939)
234				08/12/04 [Spanish] Anexo (15) Letter to Director of Archivo de Instrumentos Publicos from Notary (DIAZ 940)
235				08/05/04 [Spanish] Anexo (14) Document signed by Notary (DIAZ 941)
236				08/17/04 [Spanish] Anexo (16) Document and receipt (DIAZ 942 - 943)
237				08/17/04 [Spanish] Anexo (17) \$1,380,921.98 Check (DIAZ 944)
238				08/12/04 [Spanish] Anexo (18) Servicio de Administracion Tributaria documents (DIAZ 945 - 949)
239				08/2004 [Spanish] Anexo (19) Banca Serfin documents (DIAZ 950 - 953)
240				05/10/04 [Spanish] Anexo (20) Banco Nal. De Mexico (DIAZ 954)
241				08/06/99 [Spanish] Anexo (21) (DIAZ 955 - 957)
242				04/15/97 Anexo (22) United States Passport of Peter Russell John Thompson (DIAZ 958 - 959)
243				09/07/00 Anexo (23) California Driver License of Craig Maurice Kelley (DIAZ 960)
244				04/25/00 Anexo (24) Passport of Martha Margarita Barba De Diaz (DIAZ 961)
245				[Spanish] Anexo (25) Jose Guadalupe Rodriguez and Rafael Martinez Nunez - Credencial Para Votar (DIAZ 962 - 963)
246				08/10/04 [Spanish] Anexo (26) Recibo (DIAZ 964)
247				08/10/04 [Spanish] Anexo (27) Recibo (DIAZ 965)
248				08/10/04 [Spanish] Anexo (28) Recibo (DIAZ 966)
249				08/17/04 [Spanish] Anexo (29) Recibo (DIAZ 967)
250				08/30/05 [Spanish] Anexo (30) Recibo (DIAZ 968)
251				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00001)

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

- | | |
|---|--|
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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
252				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00002 – 12)
253				04/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00013)
254				05/27/03 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00014)
255				10/22/03 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00015)
256				Notes of communications with Howell & Gardner Investors, Inc. (LA 00016 – 74)
257				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00075)
258				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00076 – 86)
259				03/04/02 Confidential Purchase Order for Howell & Gardner Investors, Inc. with Laughlin International Inc. (LA 00087)
260				Screenshots of notes of activity of account of Howell & Gardner Investors, Inc. (LA 00088 – 98)
261				05/05/06 Deposition of Jerry Icenhower (PMK)
262				11/28/07 Deposition of Jerry Icenhower
263				08/07/06 Deposition of Michael Busch
264				08/01/07 Deposition of Craig Kelley
265				03/17/08 Deposition of Craig Kelley
266				08/13/07 Deposition of Nicolas Kocherga
267				08/15/07 Deposition of Eugene Kocherga
268				09/04/07 Deposition of Michael Kocherga Gummerson
269				09/05/07 Deposition of Martha Barba de Diaz
270				09/11/07 Deposition of Alejandro Diaz
271				09/14/07 Deposition of Alejandro Diaz
272				02/01/08 Deposition of Alejandro Diaz
273				Docket for <i>Lonie v. Icenhower</i> , US District Court Case No. 00-00612

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
274				10/02/02 Defendant's Settlement Brief in <i>Lonie v. Icenhower</i> , , US District Court Case No. 00-00612
275				Jan 12, 2006 Transcript of hearing held in Case No. 04-90392-LA
276				Feb 23, 2006 Transcript of hearing held in Case No. 04-90392-LA
277				Oct 4, 2007 Transcript of hearing held in Case No. 04-90392-LA
278				June 28, 2007 Transcript of hearing held in Case No. 04-90392-LA
279				Jan 31, 2008 Transcript of hearing held in Case No. 04-90392-LA
280				Oct 3, 2007 Transcript of hearing held in Case No. 06-90369-LA
281				09/28/07 Declaration of Brent Buscay, Custodian of Records for Laughlin Associates, Inc. filed in Case No. 90392
282				08/09/06 Declaration of Alex Diaz in Support of Statement of Position file in Case No. 04-90392
283				09/06/06 Supplemental Declaration of Alex Diaz in Support of Statement of Position re: Determination of Settlement filed in Case No. 04-90392
284				Defendants' Settlement Brief, filed October 9, 2002
285				Memorandum of Decision and Order ("Memorandum Decision"), filed September 25, 2003
286				Memorandum of Decision and Order re: Damages; and Directing Entry of Judgment (the "Memorandum Decision on Damages"), entered November 24, 2003
287				Default of Howell & Gardner on February 23, 2007 in 06-90369
288				Default of the Debtors on September 17, 2007 in 06-90369
289				Default of Buckeye International Funding, Inc. on September 17, 2007 in 06-90369
290				Default of Columbus Enterprises, LLC on September 17, 2007 in 06-90369
291				Default of Croton Enterprises, LLC on September 17, 2007 in 06-90369
292				Default of Lynnwood Enterprises, LLC on September 17, 2007 in 06-90369
293				Default of Newark Enterprises, LLC on

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EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
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GROUND(S) FOR OBJECTION

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| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				September 17, 2007 in 06-90369
294				Default of Utica Enterprises, LLC on September 17, 2007 in 06-90369
295				Default of Western Financial Assets, Inc. on September 17, 2007 in 06-90369
296				Default of Donna Icenhower in 04-90392
297				Default of Jerry Icenhower in 04-90392
298				Default of Seaview Properties in 04-90392
299				01/12/04 Reporter's Transcript of 341(A) Hearing
300				03/22/04 Reporter's Transcript of 341(A) Hearing (continued)
301				Property Transfer Flow Chart (ICEN00436)
302				Jan 18, 2007 Transcript of hearing held in Case No. 04-90392-LA
303				6/29/2004 [Spanish] Letter of Instruction w/Apostille dated 6/8/04 (CK 00241-245
304				02/05/08 Mexican Notary's File (Diaz 799-837
305				Certified translations of Spanish Documents
306				Property Transfer Flow Chart (Icen00436)
307				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Complaint, March 24, 2000
308				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Amended complaint, July 27, 2000
309				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Answer to Complaint by defendant Donna Lee Icenhower, defendant Jerry Lee Icenhower, Sept. 1, 2000
310				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Notice of Motion and Motion by plaintiff for preliminary injunction, March 11, 2002
311				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Memorandum of points and authorities by plaintiff in support of motion for preliminary injunction, March 11, 2002
312				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Notice of Motion and Motion by plaintiff for summary judgment, for partial adjudication on, March 11, 2002
313				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Memorandum of points and

20

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
| 2. Irrelevant | 6. Insufficient Foundation (Relevancy, personal Knowledge, Authenticity) |
| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |

SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

TRIAL EXH.	DATE ADMITTED	DATE SUBMITTED	LEGAL GROUND(S) FOR OBJECTION	DESCRIPTION OF EXHIBIT
				authorities by plaintiff in support of motion for summary judgment, March 11, 2002
314				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Richard W. Page re motion for summary judgment, March 11, 2002
315				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Ernest J. Maupin re motion for summary judgment, March 11, 2002
316				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Jose Maria Abascal re motion for summary judgment, March 11, 2002
317				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Declaration of Narciso P. Lomeli Enriques by defendant Donna Lee Icenhower, defendant Jerry Lee Icenhower in suppt of oppos to mot for summary jgm and mot for preliminary injunction, May 1, 2002
318				Lonie, et al v. Icenhower, et al, CASE #: 3:00-cv-00612-L-POR, Order by Judge M. J. Lorenz denying pla's motion for preliminary injunction, June 18, 2002
319				Notice Pursuant to Fed. R. Evid. 902(11)
320				Nevada Secretary of State Data re: Howell & Gardner Investors, Inc.
321				Expert Report – C. Hugh Friedman
322				Expert Rebuttal Report – Eduardo A. Bustamante

EXHIBITS ARE TO BE SUBMITTED TO THE COURT AT THE TIME OF TRIAL.
THEY ARE NOT BE FILED WITH THE OFFICE OF THE CLERK.

GROUND(S) FOR OBJECTION

- | | |
|---|--|
| 1. No Objection: Admissibility Stipulated | 5. Inadmissible Opinion |
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| 3. Hearsay | 7. Unduly Time Consuming, Prejudicial Confusing or Misleading |
| 4. Best Evidence | 8. Other (Specify): |
- SDODMS1/687735.3

Signed by Judge Louise DeCarl Adler April 18, 2008

EXHIBIT “C”

EXHIBIT C

Diaz Defendants' Exhibit List

T	Instructions to Diaz Defendants where to deposit what amount of money in payment for Villa		
U	Eduardo Sanchez Acosta's file		
V	Jorge A. Vargas' report and file		
W	Felipe I. Vazquez Aldana Sauza's file		
X	Letter from Mexican Consulate dated 11/28/07		
Y	English deed and trust documents for transfer from Kocherga to Henson, D.		
Z	Spanish deed and trust documents for transfer from Kocherga to Henson, D.		
AA	English deed and trust documents for transfer from Kocherga to Bell		
AB	Spanish deed and trust documents for transfer from Kocherga to Bell		
AC	English deed and trust documents from Kocherga to Schaffer		
AD	English deed and trust documents from Kocherga to Schaffer		
AE	English deed and trust documents from Kocherga to Henson, K.		
AF	Spanish deed and trust documents from Kocherga to Henson, K.		
AG	English deed and trust documents from Kocherga to Hendri		
AH	Spanish deed and trust documents from Kocherga to Hendri		
AI	English deed and trust documents from Kocherga to Widener, III		
AJ	Spanish deed and trust documents from Kocherga to Widener, III		
AK	English deed and trust documents from Henson, D., Bell, Schaffer, Widener, III, Hendrie and Henson, K. to Lonie		
AL	Spanish deed and trust documents from Henson, D., Bell, Schaffer, Widener, III, Hendrie and Henson, K. to Lonie		
AM	English deed and trust documents from Lonie to Icenhower		
AN	Spanish deed and trust documents from Lonie to Icenhower		

EXHIBIT C

Diaz Defendants' Exhibit List

AO	English deed and trust documents from Icenhower to Howell & Gardner Investors, Inc.		
AP	Spanish deed and trust documents from Icenhower to Howell & Gardner Investors, Inc.		
AQ	English deed and trust documents from Howell & Gardner Investors, Inc. to Diazes		
AR	Spanish deed and trust documents from Howell & Gardner Investors, Inc. to Diazes		
AS	Villa Vista Hermosa related photographs A - Z		